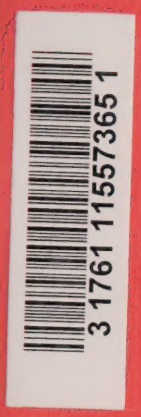

Legal Aid and the Poor

A Report by the
National Council of Welfare

Winter 1995

Canada

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TABLE OF CONTENTS

INTRODUCTION

"Justice is open to all - like the Ritz Hotel."

Anonymous British judge

Legal aid is in trouble everywhere in Canada. Skyrocketing costs are leading one provincial legal aid plan after another to threaten major cuts in services unless governments provide them with more funds. Private lawyers who do legal aid work have several times withdrawn their services (a polite expression for going on strike) in order to obtain increases in their fees or to prevent reductions in fees. Low-income people with small, medium and even big legal problems are being turned away in droves by many of the plans.

The National Council of Welfare has always been concerned with legal services for low-income people. In the early 1970s, when legal aid programs were first being established in Canada in their present form, many policy discussions were held about ways to ensure that the services would be the best possible for the poor. We participated actively in these debates through the publication of a 1971 report The Legal Services Controversy: An Examination of the Evidence.

In the wake of the difficulties facing legal aid in recent years, many evaluations and proposals have been written. Almost all discuss these issues from the perspective of the two most powerful players involved, lawyers and governments. Lawyers want more money to be spent in ways which would not necessarily benefit the poor, bringing to mind early criticisms that legal aid in Canada was "a system by the legal professional for the legal professional with total indifference to the client - the poor."[1] Budget-conscious governments mainly want to contain or reduce expenditures.

The purpose of this report is to establish the extent to which legal aid programs meet the needs of the poor and to examine ways in which they might be improved. We start with an examination of the reasons why low-income people need subsidized legal assistance and the nature of the services they require. We then analyze the way in which legal aid programs work

in Canada today and assess the degree to which the services they offer are capable of dealing with the legal problems of the disadvantaged.

This assessment demonstrates that Canada's legal aid programs do not serve the needs of the poor. Vast numbers of low-income people, particularly low-income wage earners, have almost no access to legal assistance at all. Poverty law services, which are by far the most important for the poor population, are given the lowest priority in almost all legal aid plans. In many jurisdictions, the methods used to deliver legal aid services are inefficient, wasteful, and even harmful to their clients, especially in the area of criminal law.

Overall, we conclude that what legal aid needs is not so much more money as better management. We suggest important changes to ensure that the main beneficiaries of legal aid will no longer be lawyers, but low-income people.

I. WHY POOR PEOPLE NEED LEGAL AID

For people who have no money to pay court fees or hire a legal expert to advise and represent them, the right to subsidized legal services is the most fundamental of all rights. What use is a Charter of Rights and Freedoms guaranteeing your right to life and liberty, freedom of speech or equality before the law, if you cannot defend yourself against unjust accusations or discriminatory treatment? What is the point of laws entitling citizens to benefits, such as unemployment insurance or support payments from an ex-spouse, if program administrators or your ex-husband know you cannot afford the appeal or lawsuit required to get your rights enforced?

The law, according to former Justice Minister Mark MacGuigan, is "the basic regulator of society," an intricate set of rules that envelop our daily lives. If these rules didn't exist, he added, the result would be disorder: people would be threatened by arbitrary, brute force from whoever could obtain power, and we would have no framework to secure our plans or expectations.[2]

Before legal aid, the vast majority of poor Canadians - meaning all those who did not know the law and were not articulate enough to speak for themselves - had little choice but to live without the protection of the law. If anyone such as the police, collection agencies and loansharks, exploitive spouses, landlords or government officials persecuted or cheated them, they were helpless and incapable of asserting whatever rights they may have had. The result, said then-Attorney General of the United States Robert F. Kennedy in 1964 about a similar situation in his country, was that "The poor man looks upon the law as an enemy, not as a friend. For him the law is always taking something away."[3]

When are legal advice and representation essential to the poor? We will consider this in different contexts, starting with cases where a poor man or woman has been accused of committing a criminal offence.

Criminal Legal Aid

When people who are not experts talk about legal aid in criminal cases, they often express little sympathy for those who are accused of wrong-doing. After all, many people say, most of them are probably guilty anyway, and people who commit criminal acts - especially violent ones - get off much too lightly as it is. If it were not for legal aid, some people feel, more criminals would be punished and society would be a safer place.

One way of changing people's views is to point out that 90 percent of the Criminal Code violations which come to the attention of the police in Canada are non-violent, and that in a large proportion of violent crimes, the offenders are not hardened criminals but acquaintances, friends or relatives of the victims. The majority of reported Criminal Code offences concern property crimes (accounting for 55 percent, with half being thefts under $1,000). The next two largest non-violent categories are minor property damage under $1,000 (called minor mischief, and accounting for 15 percent) and traffic offences (seven percent, mostly for impaired driving).[4]

The quickest change in attitude toward legal representation happens when it is you or someone close to you who is suspected of a criminal act. You then realize that all but the most minor criminal cases can be very complex, and that the police and court environments are so intimidating to non-initiated people that even intelligent, well-informed suspects who face criminal charges without the help of a lawyer can be found guilty of something they did not do. In most criminal prosecutions, the accused are poor, they have limited schooling, and little or no idea what is going on.

The main reason why representation by a lawyer is almost always essential in criminal cases is that the criminal justice system is an adversarial one. The role of the prosecutor, who is backed by the considerable resources of the police, is to present the evidence which will establish the guilt of the accused. Once the evidence has been presented, it is up to the defense either to offer contradictory evidence or to argue that the prosecution's case is insufficient. The judge and jury are neutral arbiters who weigh the evidence put before them but do not investigate the facts themselves.[5]

Because unrestricted state power can easily become a weapon of oppression, and because our society believes that it is better to let some criminals go free rather than convict an innocent

person, hundreds of rules have been developed over several centuries to protect the rights of the accused. For example, confessions obtained by beating suspects are not admissible, there is a right to trial by a jury for more serious offences, some proof of criminal intent is required in many cases, and there must be a minimum amount of evidence of guilt to sustain a conviction. The fact that these rules are enormously complex, and require that accused people assert their rights at every stage of the proceedings and make many important strategic choices, led the U.S. Supreme Court to declare in the 1950s that:

> (R)eason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him... Governments, both state and federal, quite properly spend vast amounts of money to establish machinery to try defendants accused of crime... That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indication of the widespread belief that lawyers in criminal courts are necessities, not luxuries... From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.[6]

The Supreme Court of Canada has not yet taken a position on whether the Charter of Rights and Freedoms, whose relevant sections came into force in 1982, also give low-income Canadians a right to government-funded legal representation in criminal trials. The provincial appeal courts which examined the question concluded that although such a right is not specifically listed in the Charter of Rights, it may be indirectly guaranteed by sections 7 and 11(d) of the Charter, which give everyone the right to be presumed innocent, and the right not to be deprived of life, liberty, and security of the person, except as a result of a fair trial.[7]

In several decisions issued together in September 1994, the Supreme Court considered the right to free legal services of people who have just been arrested in connection with a criminal offence.[8] One of the questions addressed was whether section 10(b) of the Charter of Rights, which gives arrested or detained people the right "to retain and instruct counsel without delay and to be informed of that right," makes it mandatory to provide "standby" legal aid services on a 24-hour basis in all jurisdictions. According to the Supreme Court, section 10(b) does not impose such an obligation, but it requires that detainees be immediately and properly

informed about the availability of legal aid services in the area, and be given an opportunity to contact them where they exist.

In these judgments, the Court made it very clear that it was not ruling on the question of whether the Charter guarantees a right to legal aid at trial and on appeal. If and when the Court hears a case on this broader question, it will almost certainly refer to the International Covenant on Civil and Political Rights, which Canada has signed. Article 14 of the Covenant states that everyone who is accused of a criminal act shall be entitled "to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it." Although the Covenant does not have force of law in Canada, such international agreements can play an important role because our courts often use them to interpret enforceable laws such as the Charter of Rights.

Young people between the ages of 12 and 18 already have a guaranteed right to legal assistance under the federal Young Offenders Act, which came into force in 1984. It requires arresting police officers and court officers, at every stage of the judicial process, to advise accused young people of their right to be represented by a lawyer and to give them a reasonable opportunity to exercise that right. If a youth wants to be represented and legal aid is not available, the Young Offenders Act specifies, the youth-court judge must appoint a lawyer who will be paid by the Attorney General of the province if the legal aid plan does not cover it.[9]

Another compelling argument why the poor should be provided free legal services in criminal cases is that our criminal justice system is heavily biased against disadvantaged people. Part of this bias is due to the law itself. The Criminal Code offence of "disturbing the peace," for example, and quasi-criminal provincial Liquor Acts, forbid many types of behaviour <u>in public</u>, including drinking on the street and other unlicensed public places, shouting, swearing, loitering and being obnoxiously drunk. Such laws have a much greater impact on the poor, some of whom are homeless and many of whom spend a great deal of time on the street or in other public places to stay out of their overcrowded homes. In Canada in 1992, these laws were used to lay more than 100,000 charges against men and over 10,000 against women,[10] reminding us of the famous saying: "The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets and to steal bread."[11]

Prostitution is another case in point. Prostitution among consenting adults has never been a crime in Canada, but the Criminal Code makes it illegal to communicate in public places for the purposes of prostitution. The result is that the large proportion of prostitutes who work in brothels, massage parlours, bars and "escort" services are almost never troubled by the law.[12] In Canada in 1992, about 5,000 charges were laid against female street prostitutes, many of whom live from hand to mouth.[13]

The bias against the poor is not so much in the law itself but in its implementation. There are many stages between the point crimes are committed and the point where offenders are sentenced, and the proportion of low-income people increases at each level. Describing this, a U.S. senator said:

> Justice has two transmission belts, one for the rich and one for the poor. The low-income transmission belt is easier to ride without falling off and it gets to prison in shorter order. The transmission belt for the affluent is a little slower and it passes innumerable stations where exits are temptingly convenient.[14]

To start with, most crimes are never reported to the police. In Canadian cities, even serious crimes like sexual assaults, other assaults and robberies go unreported in more than half of all cases.[15] Among the factors influencing the decision to report a crime to the police, it has been found, is the appearance of the offender. People who see a crime being committed are more likely to report it if the offender is of a different race than they are or is dressed in a way which indicates that he or she is of a lower social class. So-called "white-collar" crimes, including most employee pilferage, fraud and embezzlement, are not often reported because many companies prefer to deal with them internally. "Low-class" crimes like burglaries and car thefts are usually reported because it is required to collect insurance.[16]

In the stages following the reporting of a crime, the discriminatory effects of the justice system are even more evident. To summarize the problem in both the United States and Canada (and probably every other country in the world), criminologist Jeffery Reiman stated that:

> <u>For the same criminal behaviour</u>, the poor are more likely to be arrested; if arrested, they are more likely to be charged; if charged, more likely to be convicted; if convicted more likely to be sentenced to prison; and if sentenced, more likely to be given longer prison terms than members of the middle and

> upper classes. In other words, the image of the criminal population one sees in our nation's jails and prisons is an image distorted by the shape of the criminal justice system itself. It is the face of evil reflected in a carnival mirror, but it is no laughing matter.[17]

The mechanism which produces this result, explains Canadian criminologist Thomas Gabor, is the large reduction in criminal cases which occurs at every stage of the judicial process. According to a 1987 federal government study, at most 8.5 percent of offences known to the police go through the entire process and end up with the imposition of a sentence.[18] The most important reason for this enormous attrition is that more than half of complaints of criminal acts remain "uncleared," largely because the offenders are never identified. In addition, police officers and prosecutors have a great deal of discretionary power to decide whether to pursue a case, so that no charges are laid in about a third of the "cleared" offences.[19]

The criteria used by police officers and prosecutors in deciding whether to pursue or drop charges are similar to those of witnesses who decide whether to report a crime. Suspects who fit the popular stereotype of the criminal, meaning that they are single young males, aboriginal or black, unkempt, disrespectful and of low social status, have a much smaller chance of seeing their cases dropped. Studies of young offenders show that lower-class youths are much more likely to be referred to juvenile court, whereas youngsters from wealthier families are more often dealt with informally, such as by being turned over to their parents. Except when they engage in "disorderly" conduct like prostitution, most girls - although perhaps not most aboriginal or black girls - are released without charges, especially when they have male co-suspects. Higher-class defendants are seldom, if ever, brutalized by the police.[20]

The differential treatment of low-income accused continues through their trials and sentencing. Poor defendants are more likely to be held in prison while better-off ones are released until trial. A Halifax study of the outcome of criminal trials found that employed defendants who had been found guilty of minor offences received significantly lighter sentences than defendants with similar criminal records who did not have a job. Even worse, the study showed that among first offenders who had been found guilty of a minor offence, 23 percent of the white defendants received a discharge while none of the black defendants were granted one.[21]

Most damning about the discriminatory nature of our justice system are figures concerning inmates of Canada's prisons. Self-identified aboriginal peoples represent approximately three percent of the population of Canada, but they comprise about 11 percent of all people admitted to federal institutions, and 15 percent in the case of female offenders. The situation is even worse in the Western provinces, and worst of all in Saskatchewan. In that province, aboriginal peoples make up seven percent of the total population and 60 percent of those admitted to provincial prisons.[22]

The final proof that Canada's justice system is flagrantly unjust toward low-income people is that 35 percent of the people admitted to provincial and territorial prisons in this country are there because of their failure to pay fines, ranging from a low of 14 percent in Newfoundland to a high of 44 percent in Quebec.[23] A study of 1982-83 admissions discovered that 76 percent of those admitted to Saskatchewan prisons for fine default were aboriginal peoples and that in Ontario, 60 percent of aboriginal admissions for fine default had been the result of violations of the Liquor Act.[24]

What can legal aid programs do about these injustices? If they were well conceived and organized, they might be able to bring about important reforms. At the very least, they can make a crucial difference in many individual situations. A Toronto study found that accused people who were not represented by a lawyer were more likely to be found guilty, and that in the frequent cases where accused people were charged with several related offences, those who were unrepresented were more likely to be found guilty of the most serious charge.[25] The Halifax study cited earlier established that offenders without prior convictions received lighter sentences when they had legal representation.[26]

Legal Aid for Non-Criminal Law

While criminal legal aid services are essential to provide a bare minimum of equal treatment to low-income people, these services are of no use whatsoever to the vast majority of the poor. In spite of the fact that disadvantaged people, and particularly disadvantaged single young men, are greatly overrepresented among criminal defendants, people charged with criminal offences make up a very small proportion of low-income Canadians. Most poor people

have never been, and probably never will be, in trouble with the law. What they need are good civil law services.

The traditional view is that even if civil law problems affect a much greater proportion of low-income people, criminal legal aid should still have priority. Defenders of that position argue that the consequences of lack of representation are less drastic in civil cases (because there is no imprisonment) and that the imbalance is much greater in criminal cases because the opposing party is the state, with its considerable resources.[27]

In recent years, this long-standing view of the lesser importance of non-criminal matters has been challenged. It was pointed out that the state is also the other party in numerous civil disputes, including all those which involve benefits under government programs. As for criminal cases having more drastic consequences, civil disputes can have effects which are just as severe, such as the removal of a child from his or her parents' home in child protection cases, the involuntary commitment of psychiatric patients, and the deportation of refugees.[28] A legal aid staff member commented that a tribunal decision on whether a widow will or will not be granted a pension has long-range stakes which are more important than those involved in whether a man accused of impaired driving for the second time is or is not going to spend a short time in jail.[29]

Others have pointed out that the vast majority of criminal legal aid clients are men, while most of the beneficiaries of civil legal aid are women. As a result, the present system of preference for criminal legal aid might be in violation of the provision of the Charter of Rights and Freedoms requiring that equal services be provided regardless of sex.[30] The emphasis on criminal services not only makes it harder to serve women's basic needs in the areas where services are already provided, but also ties up funds which could be spent on innovative services specifically geared to women, such as legal assistance for victims of family violence.

As well as needing more civil than criminal law services, low-income people have a much greater need for civil law services than people with average incomes. Middle-class people seldom need a lawyer. A recent survey found that half of adult Ontarians have used professional legal services three times or less in their lives. The most frequent uses were real estate/mortgage transactions (44 percent), wills/estates (18 percent) or divorces and other family matters (eight percent).[31] The majority of poor people have much greater legal needs. For one

thing, "If you are poor, you depend on the law, regulations, and bureaucracies for the necessities of life."[32] Chances are great that you will have problems at some point, and more likely at many points, requiring knowledge of laws and regulations concerning your main source of income, such as social assistance, unemployment insurance, workers' compensation, disability benefits or pension programs for the elderly poor.

Low-income people are also much more likely to need legal assistance as consumers.[33] They are the prime targets of consumer fraud, as unscrupulous operators take advantage of their helplessness or disabilities to misrepresent the price or quality of their merchandise. Interest on sales and loans is disguised to fool people with little education. Small Claims courts, initially perceived as "people's courts," are in fact collection agencies where corporations and professionals (accounting for 77 percent of plaintiffs in a Windsor, Ontario study) obtain judgments without opposition against low-income respondents.[34] Collection practices against the poor are harsh and often illegal.

Housing is the other area where many low-income people need legal services, in part because "Slum landlords are notoriously delinquent in fulfilling their obligations to provide services and repairs."[35] Cockroaches and dangerous electrical wiring abound in poor urban areas and inadequate enforcement of housing codes is the rule rather than the exception. Landlord-tenant disputes over repairs and illegal rent hikes frequently escalate, leading to rents being withheld and notices of eviction. Discrimination against prospective tenants who are welfare recipients, or parents, or members of visible minorities, are also common problems, and single-parent mothers are particularly vulnerable to sexual harassment by landlords or building superintendents.[36]

Lawyers involved with introducing civil legal aid services in various communities report that having "lawyers on our side" can have tremendous community-wide ramifications.[37] Welfare workers whose main concern used to be to save money by keeping benefits as low as possible start paying more attention to recipients' rights and entitlements under the regulations. Collection agencies become slower to repossess articles or seize household furniture. Some landlords become quicker at making repairs. Children's aid workers are more hesitant to remove children from their homes. When a welfare mother was asked how she felt about the changes legal aid had brought to her community, she answered that it "makes me feel like a human being."[38]

In addition to these widespread problems, different groups of disadvantaged people have particular needs.

Women. As women make up close to 60 percent of the poor,[39] their special problems loom large in the provision of legal aid services. Many of these problems have to do with their current or past relationships. Single-parent mothers, and some women who still live with their husbands, need legal assistance for family law matters such as separation and divorce, division of matrimonial property, child custody and access and support payments. Some also have legal questions related to their roles as mothers, such as problems with child welfare authorities or the need to have a child's paternity legally recognized.

Women also need legal assistance as victims of crimes of violence. Although men (especially young ones) are as likely to experience such attacks, women tend to be assaulted by their husbands or ex-husbands, whereas men tend to be assaulted by strangers.[40] A recent national survey found that three women in ten had been assaulted at least once by their husbands or partners, including 15 percent by their current spouse.[41] Women and girls are much more likely than their male counterparts to experience sexual assaults and incest.[42]

Although most victimized women do not file criminal complaints, they often want legal advice - usually on both family and criminal law - to understand their options. Those who decide to report the assaults want information about their rights and responsibilities as complainants and witnesses, about the criminal justice process and courtroom procedure and about the progress of their case (such as whether formal charges have been laid, when the trial and the sentencing are likely to take place, etc.). Many want someone to accompany them when they testify in court.

Aboriginal Peoples. As mentioned above, aboriginal people are overrepresented in the criminal justice system. They are not only more likely to be sent to jail, but also more likely to be charged with and found guilty of criminal offences. Some of these offences, such as wife and child assault, give rise to needs for non-criminal legal aid services for their victims. For reasons we will return to later, the rate of domestic assaults has reached "epidemic proportions" in aboriginal homes.[43] Apart from that, and the multitude of problems aboriginal people experience because they are the poorest of the poor, the main difficulty is that many of them live

in rural or remote northern communities where legal aid services are difficult to obtain or inaccessible.

Immigrants and Refugees. A 1993 survey of immigrants and refugees who were clients of Vancouver multicultural social service agencies found that three-quarters reported at least one problem with one or more legal ramifications. Only nine percent of the problems were of a criminal nature (this included victims as well as offenders). The only two large categories related to government income replacement benefits (social assistance, workers's compensation, etc., accounting for 30.4 percent), closely followed by issues relating to refugee status, immigration, citizenship and passports (29.5 percent).[44]

The study also found great differences in legal needs depending on legal status and length of time in Canada. Among the newly arrived, refugee claimants have a desperate need to secure a legal entry into Canada. After the initial settlement period, both immigrants and refugees require assistance for a variety of situations including problems with unemployment insurance - especially for seasonal workers - and other government benefits, disputes with landlords or employers, and instances of racist treatment suffered by members of visible minorities. Later come concerns with citizenship and sponsorship of family members who are still overseas. Problems with the criminal law, mainly involving wife beating and charges against young people, were found almost only among those who had been in Canada for many years.[45]

People With Disabilities. For those who are disabled, wrote Judge Rosalie Abella, access to legal services is vital because it means access to the mainstream and integration.[46] It means having the possibility of enforcing equality laws such as human rights codes and the Canadian Charter of Rights and Freedoms, which require accommodations - such as ramps for wheelchair users, special telephone equipment for the deaf and hard of hearing, manuals on tape or printed in Braille for the visually impaired - to give disabled people access to the services everyone else in our society takes for granted.

The most helpless among people with disabilities are psychiatric patients who face involuntary commitment to mental institutions. The very fact that the commitment is involuntary means that there is a legal dispute between the medical personnel and the patient.[47] Often unable to voice their point of view, and labelled in a way which destroys their credibility, mentally ill people need a unique form of legal aid, sensitive and very specialized.

Elderly People. By age 85 and over, so many elderly people suffer from serious disabilities that more than 40 percent of women and about 30 percent of men live in institutions.[48] Seniors in nursing homes and other group living arrangements are very vulnerable to abuse and need someone to defend their rights. Financial exploitation by close family members is another danger against which elderly people with physical and/or mental disabilities need protection.

Quebec's Macdonald Task Force on Access to Justice wrote that people over the age of 65 were most frequently victims of financial and consumer fraud.[49] The task force speculated that this was because seniors are the least educated group in our society and the least well informed about their rights and possible recourses. It also makes sense that thieves would be particularly attracted toward persons who combine a low degree of financial sophistication with a modest, but solid bank account. Those elderly who do have savings might also want assistance to make their wills. The small number of low-income people who are interested in this service are much less likely than their middle-income counterparts to be able to use the do-it-yourself books on this subject which are found in many bookstores.

Finally, all the disadvantaged groups mentioned here could benefit from legal actions to clarify their rights under the equality provisions of the Canadian Charter of Rights and Freedoms, which came into effect in 1985. The Charter can be used to invalidate any law or government policy or initiative which does not respect the right of vulnerable groups to be treated equally.

Preventive Legal Aid Services

Many poor people who seek legal aid face an immediate crisis: they have just been arrested, they got an eviction notice from their landlord, their welfare payments were cut off, a judgment was issued against them, their child is to be removed from their home tomorrow, etc. This urgency is normal in criminal cases, but in civil conflicts it is strikingly different from the way better-off people operate. Higher-income Canadians involved in serious disputes typically get legal advice as soon as possible, negotiate through their lawyers before initiating any formal procedures, and agree upon a settlement without going to court in 90 out of 100 cases.[50]

Part of the problem is that low-income persons, who have the least formal education, who often lead isolated lives, and who have usually suffered many injustices, are so badly informed they do not know or believe they have any rights. For example, poor tenants in a building whose landlord refuses to repair the furnace which has broken down in the middle of winter might not even suspect they have other options but to stop paying the rent, a course of action that will almost invariably lead them into deeper trouble. Because of this, it is essential that legal aid services have an important component devoted to outreach and public education.

Legal aid personnel can also help communities organize themselves into interest groups to defend their rights. Lawyers provide similar assistance to their affluent clients, helping to create organizations like the Canadian Manufacturers Association and the Business Council on National Issues. Low-income counterparts include associations of tenants, single-parent mothers, pensioners, immigrants, welfare recipients and homeless people. Collective actions sponsored by such groups are much more efficient. Instead of handling one or two individual cases for the least timid tenants from the building whose landlord will not fix the furnace in winter, for example, it is far preferable to have a tenants' association contact all the building's tenants and join their grievances into one powerful action.

Looking at questions collectively also makes it possible to develop innovative, more constructive approaches. In London, Ontario, in 1992-93, for example, the legal aid clinic was concerned that an average of 50 low-income families were being evicted from their homes every week, causing severe disruptions in their lives. In many cases, neither party wanted an eviction but it was the only solution available through the court. In the hope of finding a better way, the clinic set up a project to study the feasibility of developing a mediation service for landlords and tenants where less drastic compromises could be hammered out.[51]

Another type of collective approach is the test case, which is an individual legal action whose outcome can affect large numbers of people. Test cases can require considerable resources because they are often appealed all the way to the Supreme Court. One example of a test case is a challenge to the Ontario "man in the house" rule, in which the Court of Appeal ruled that a woman's social assistance benefits could not be stopped for the simple reason that she had a live-in boyfriend, when the boyfriend did not contribute to the maintenance of the household.[52] Another example is the Finlay case, in which it was argued that when a Winnipeg social assistance recipient had mistakenly been given more money than he was entitled to, the

government could not deduct these overpayments later from his benefits without violating the terms of the Canada Assistance Plan.[53] Jim Finlay narrowly lost his case when four judges of the Supreme Court agreed with him and five did not.

Most important in the long term, lawyers for the poor can imitate lawyers who lobby governments and other decision-making bodies on behalf of their affluent corporate and individual clients. Lobbying for changes in laws and programs is the ultimate preventive legal action. For one thing, as former Justice Minister Mark MacGuigan said, legislators obey the rule that the wheels that squeak loudest and longest get the grease.[54] If low-income people take no part in the decision-making process, more laws will get passed against their interests, making their lives even more difficult and requiring even more legal services to get them out of trouble. On the other hand, one stroke of the legislative pen in favour of the poor, such as a law setting up an effective, automatic system for collecting maintenance payments, can eliminate thousands of individual actions and significantly reduce the need for legal aid services.

II. HOW LEGAL AID PROGRAMS WORK IN CANADA

Under Canada's constitution, the responsibility for legal aid is shared between the federal and provincial governments. The most common justifications for a federal role in legal aid are the federal government's control over criminal law and its responsibility to enforce the provisions of the Charter of Rights and Freedoms concerning the right to a fair trial. Provincial governments have a more global responsibility because they are in charge of the administration of justice and issues relating to property and civil rights.

In practice, the provinces (and the territories since 1971) have totally controlled the administration of legal aid programs for both civil and criminal matters. The federal government's role has been very important, however, because its financial contributions to provincial and territorial legal aid programs have greatly affected the services provided. Federal contributions are made under two main programs: 1) federal-provincial agreements negotiated by the Justice Department, which provided for federal payments of 45 percent to 55 percent (75 percent to 90 percent for the Atlantic provinces) of the cost of criminal legal aid services which meet specified standards; and 2) the Canada Assistance Plan, under which Health and Welfare Canada (later the Department of Human Resources Development) contributed half of the cost of civil legal aid services for the needy. In the territories, the Justice Department agreements cover civil and criminal legal aid.

As a result of decisions implemented in the 1990 federal budget, the federal share of legal aid costs has steadily diminished in recent years. Payments under the Justice Department's agreements were frozen at their 1989-90 level for two years, then the cap was lifted slightly to allow for a one percent increase in each subsequent year. The growth in payments under the Canada Assistance Plan was limited to five percent a year for the "have" provinces of Ontario, Alberta and British Columbia. Combined with the fact that legal aid costs continue to skyrocket - rising by 101 percent from 1988-89 to 1992-93[55] - this partial federal withdrawal precipitated a major legal aid crisis throughout the country.

By effectively eliminating its contribution to new civil legal aid expenditures in three provinces, the federal government was retreating from many areas in which it has jurisdiction, the most obvious being divorce, unemployment insurance and pensions. The main controversy

is not about these subjects, however, but about legal assistance to refugee claimants and immigrants. Ontario and British Columbia, which together receive the bulk of newcomers to Canada, argue that the federal withdrawal is particularly unacceptable because most of the laws and procedures regulating immigration and refugee status determination, which can have significant impacts on legal aid costs, originate with the federal government.[56]

In addition to its regular legal aid contributions to the provinces, the federal government runs two specialized legal assistance plans. One is the Court Challenges Program, whose purpose is to subsidize individuals and non-profit groups for test cases of national significance, mainly involving the Charter of Rights and Freedoms. This program was abolished in 1992 but has now been reactivated. The federal government also operates the Indian Test Case Funding Program, whose goal is to fund appeals of cases relating to important, unresolved legal questions relating to aboriginal peoples, such as interpretations of the Indian Act and Indian treaties.

Organization of Legal Aid Programs

All provinces and territories have programs under which people who have legitimate legal rights to defend or exercise must first pass a financial test, and those who are found eligible go on to receive fully or partially subsidized legal services. Apart from this basic similarity, there are enormous variations in all aspects of the various legal aid plans. They have different types of governing bodies, their financial resources vary greatly, and they use different models to deliver services.

Governing bodies. One of the characteristics most Canadian legal aid administrations are proudest of is their independence. The legal aid committee of the Canadian Bar Association described why this is important:

> It is important that legal aid agencies are manifestly not the agents of government, the legal profession or any particular interest group.
>
> They must be independent of government because it is so often on the other side of legal aid cases, be they child welfare, administrative tribunal or criminal. The legal profession should not directly control legal aid because it can too easily be seen as self interested in the level of tariffs [paid to private lawyers] and types of

> delivery models... Finally, care must be taken not to have the administration of legal aid dominated by any particular faction of the community...
>
> However, government, the legal profession and the community all have vital concerns with respect to legal aid. It follows that legal aid should be administered by independent, statutory bodies under the direction of Boards which reflect a balanced representation of the interests of government, the legal profession and the community.[57]

In theory, all Canadian legal aid administrations except those of Ontario, New Brunswick and Prince Edward Island are run by independent commissions which operate at arms' length from both governments and lawyers' associations.[58] In practice, most commission members are appointed by the provincial or territorial governments and the lawyers' societies, and some legal aid plans are less independent than they seem. In British Columbia, for example, half of the directors of the Legal Services Society are appointed by the lawyers' association (called the Law Society) and in recent disputes many people have accused the legal aid board of being controlled by the province's criminal lawyers.[59] In Alberta, the Law Society directly appoints two of the 15 members of the board and jointly appoints ten of the rest with the provincial government. In Quebec, the legal aid plan is so integrated in the provincial public service that its commission cannot increase the plan's staff without Treasury Board approval.[60]

The least independent legal aid governing bodies are in Ontario, New Brunswick and Prince Edward Island. Both the Ontario and the New Brunswick Legal Aid Plans are under the direct control of lawyers' associations - the Law Society of Upper Canada in Ontario and the Law Society in New Brunswick. Prince Edward Island is the only jurisdiction whose legal aid services are not operated at arm's length from the government; the director of legal aid reports to the Deputy Attorney General.

Financial resources. Governments are the main source of revenue of all Canadian legal aid plans. As Table 1 on the next page shows, the federal and provincial governments account for 89 percent of all funds, ranging from a low of 81 percent in New Brunswick to 100 percent in Prince Edward Island and Quebec. Other minor sources of income of the plans include contributions from clients, shares of the interest earned by the sums lawyers hold in trust for clients, levies from lawyers, and various grants and donations.[61]

Table 1 also indicates the shares of each jurisdiction's legal aid revenues which are provided by the province/territory and by the federal government. The federal allocation was proportionately largest in Nova Scotia and Saskatchewan, at 68 percent and 55 percent of total revenues. The lowest relative federal contributions were to Ontario and Alberta (both at 21 percent) and to British Columbia (24 percent). Overall, the federal government contributed an average of 28 percent of total legal aid budgets in 1992-93. The comparable figure for 1989-90, which was the year preceding the federal cuts, was 39 percent. Clearly, the federal austerity measures are having a substantial impact.[62]

TABLE 1

MAIN SOURCES OF REVENUE FOR LEGAL AID PROGRAMS, 1992-93[63]

	% of Revenue from Provincial & Territorial Governments	% of Revenue from Federal Government	Total Revenue from Governments	Per Capita Federal Contribution
Newfoundland	56%	42%	98%	$4.59
Prince Edward Island	63%	37%	100%	$1.61
Nova Scotia	29%	68%	97%	$7.61
New Brunswick	34%	47%	81%	$2.16
Quebec	58%	42%	100%	$6.34
Ontario	63%	21%	84%	$6.17
Manitoba	46%	39%	85%	$5.24
Saskatchewan	41%	55%	96%	$4.40
Alberta	65%	21%	86%	$2.44
British Columbia	70%	24%	94%	$6.17
Northwest Territories	65%	34%	99%	$26.10
Yukon	56%	42%	98%	$13.02
CANADA	61%	28%	89%	$5.71

Another way of looking at revenue for legal aid is to calculate per capita federal contributions, or the amount of federal money divided by the population of each province or territory. As shown in the last column of Table 1, the highest per capita federal contributions were to the Northwest Territories and Yukon ($26.10 and $13.02 respectively), followed by Nova Scotia ($7.61) and Quebec ($6.34). Ontario and British Columbia were still among the main beneficiaries (at $6.17 each) in spite of receiving less than they would have under pre-1990 federal funding arrangements. The lowest per capita contributions were for Prince Edward Island ($1.61).

Turning to legal aid expenditures, we find that these also vary considerably from one jurisdiction to another, as shown in Table 2 on the next page.

Total expenditures for legal aid topped $603 million in 1992-93. Costs were lowest in Prince Edward Island, at $569,000, and highest in Ontario, which spent just over $321 million. Ontario, with 37 percent of the country's population, accounted for 53 percent of total spending on legal aid.[64]

Looking at per capita expenditures in the second column, we find that the largest by far were in the Northwest Territories and Yukon ($66.45 and $33.75 respectively). That is not surprising as their costs for expenses such as transportation are so much greater than those of other jurisdictions. Next came Ontario ($29.74) and British Columbia ($25.22). The smallest spenders were P.E.I. at $4.31 per capita and New Brunswick at $4.46. We will see later in this report that while very low expenses generally reveal inadequate coverage, above-average expenditures do not necessarily mean superior legal services.

When we adjust per capita expenditures on legal aid to eliminate the effect of inflation, we see that expenditures grew tremendously from the beginning of legal aid in the early 1970s until the end of that decade, then slowed down, rising by only 30 percent between 1978-79 and 1986-87.[65] Spending took off again in the following years, rising by 175 percent in actual dollars and doubling in uninflated dollars between 1986-87 and 1992-93. The third column of Table 2 indicates that between 1986-87 and 1992-93, actual expenses rose most steeply in British Columbia (336 percent) and Ontario (254 percent). A closer look reveals that more than 80 percent of the increases were for payments to lawyers in private practice.[66] The most

spectacular single increase occurred in 1991 in British Columbia, when the fees paid for legal aid services were raised by 100 percent following a strike by private lawyers.[67]

TABLE 2

LEGAL AID EXPENDITURES IN CANADA[68]

	Total Expenditures in 1992-93	Per Capita Expenditures in 1992-93	Increase in Expenditures 86-87 to 92-93	Increase in Approved Cases 86-87 to 92-93
Newfoundland	$5,508,000	$9.49	145%	38%
Prince Edward Island	$569,000	$4.31	112%	57%
Nova Scotia	$10,527,000	$11.38	99%	13%
New Brunswick	$3,347,000	$4.46	56%	- 24%
Quebec	$113,680,000	$15.73	78%	26%
Ontario	$321,044,000	$29.74	254%	126%
Manitoba	$15,117,000	$13.53	52%	14%
Saskatchewan	$7,926,000	$7.91	21%	18%
Alberta	$30,410,000	$11.38	96%	49%
British Columbia	$90,029,000	$25.22	336%	67%
Northwest Territories	$4,180,000	$66.45	175%	60%
Yukon	$1,097,000	$33.75	21%	33%
CANADA	$603,434,000	$20.90	175%	52%

A comparison of the two right-hand columns of Table 2 confirms that the bulk of the additional expenditures did not go toward providing more legal services. While total expenses rose by 175 percent between 1986-87 and 1992-93, the total number of cases handled rose by 52 percent. The discrepancy was greatest in British Columbia, where expenditures rose by 336

percent and cases by 67 percent. In New Brunswick, costs rose by 56 percent at the same time that cases were diminishing by 24 percent.

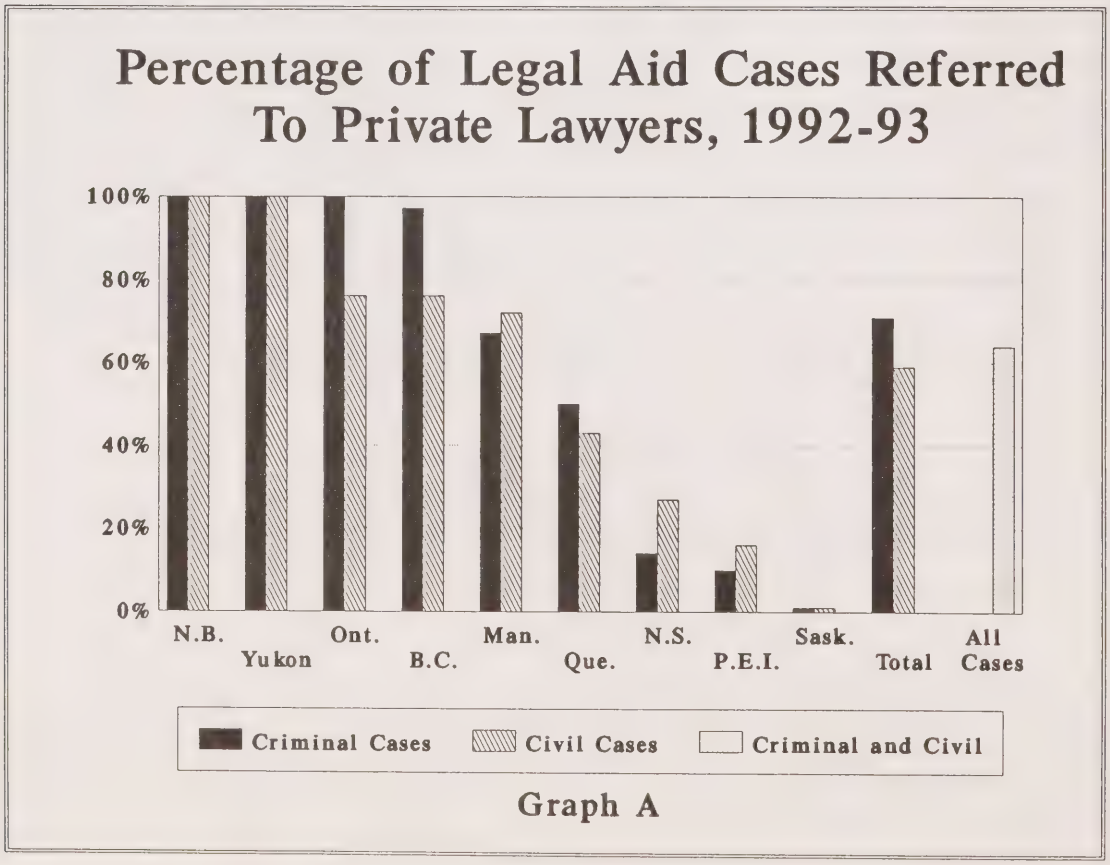
Models of service delivery. The three main models of delivery of legal aid services are: 1) the "judicare" model, under which applicants who meet the eligibility criteria are referred to a private lawyer who does whatever is required and bills the legal aid plan according to a pre-established schedule of fees; these fees are set by governments in all jurisdictions except British Columbia and Saskatchewan, where they are set by the legal aid plans;[69] 2) the staff model, under which applicants do not go to private lawyers, but receive legal services from staff lawyers employed by the legal aid plan; and 3) the community clinic model, which uses staff lawyers who work for independent neighbourhood law offices run by boards which typically include a mix of legal professionals and members of the community.

Two other features that should be mentioned are "duty counsel" services and non-professional legal workers. In addition to their regular services, most legal aid plans offer duty counsel services in criminal courts and some civil ones to provide on-the-spot services to people who need advice or representation and standby telephone services to advise people detained by the police. Duty counsel services are given by either staff or private lawyers. Non-professional legal workers, more commonly known as paralegals or community legal workers, are non-lawyers who are either directly engaged in the delivery of legal services to low-income citizens or who assist lawyers in community clinics. Paralegals are often recruited from within the population they serve and have a thorough familiarity with the problems and needs of the community, as well as varying degrees of formal training and experience.[70]

In practice, many Canadian legal aid plans do not fit into the three neat models described above. Quebec legal aid, for example, is provided through 148 offices staffed by lawyers and support employees, but all eligible applicants can choose between a staff lawyer and a private one and there are also two citizen-run community clinics. Ontario refers all criminal and most family law cases to private lawyers, with other eligible civil cases being handled mostly by staff lawyers working in 72 community clinics. Some of these clinics are specialized and focus on the needs of a specific client group, for example the Advocacy Centre for the Elderly, the Advocacy Resource Centre for the Handicapped and the clinic on Justice for Children and Youth. British Columbia refers most cases to private lawyers, but it also has 20 staff offices

and 11 community clinics, and it contracts with aboriginal communities to provide legal services in 15 native community law offices.

To have a comprehensive picture of the legal aid models used in Canada, we would need to know, for every province and territory, the proportions of criminal, family and other civil cases which are handled by private lawyers, by staff lawyers working for the legal aid plan, and by the staff of community legal clinics. Unfortunately, this information is not available. The closest approximation, shown in Graph A, is the proportions of criminal and civil cases (combining family law and other civil cases) which were handled by private lawyers in each jurisdiction except Alberta, Newfoundland and the Northwest Territories in 1992-93.[71] Figures are not available for Alberta, which uses mostly private lawyers, Newfoundland, which uses mainly staff, and the Northwest Territories, which uses all three models. These jurisdictions accounted for seven percent of all legal aid cases in Canada in 1992-93.[72]



Graph A

Graph A shows that the judicare model dominates the Canadian legal aid scene. New Brunswick and Yukon had no staff lawyers at all and referred all cases to private practitioners. Ontario and British Columbia referred all or almost all criminal cases to private lawyers, as well as the vast majority of civil cases. At the other extreme is Saskatchewan, where 99 percent of criminal matters and 98 percent of civil ones were handled by staff lawyers employed by the legal aid plan. In Quebec, private lawyers did close to half of both the civil and criminal work. Overall, close to two-thirds of all cases (64 percent for all jurisdictions excepting Alberta, Newfoundland and the Northwest Territories) were dealt with by private lawyers in 1992-93.

In the decade from 1983 to 1993, a significant shift from staff to private lawyers occurred in all provinces with mixed judicare-staff models except Manitoba. As shown in Table 3 on the next page, the change was strongest in British Columbia (from 74 percent of cases handled by private lawyers in 1984-85 to 89 percent in 1992-93) and Ontario (from 79 percent to 86 percent). It also happened in Prince Edward Island, Nova Scotia, and Quebec. Altogether (excepting Alberta, Newfoundland and the Northwest Territories), the share of legal aid cases dealt with by private lawyers increased from 55 percent in 1986-87 to 64 percent in 1992-93.[73]

One of the main reason for these shifts toward the judicare model, it would appear, is that the very small increases in legal aid personnel after the mid-1980s were insufficient to meet the greater demand. Cases handled only by staff had to be restricted, and a rising proportion of other cases were passed on to lawyers in private practice. Between 1986-87 and 1992-93, the legal aid caseload increased by 52 percent. Over the same period, the total increase in legal aid personnel who provided direct services was only six percent. This included an 18 percent increase in staff lawyers and an eighteen percent decrease in the number of paralegals.[74]

Quebec legal aid administrators have been saying for a long time that understaffing is the main reason their caseloads have increasingly shifted toward private lawyers, pointing out that when they hired more lawyers, the proportion of cases going to the private sector went down, which had the effect of lowering legal aid costs.[75] The province's Treasury Board continued to refuse to authorize the hiring of more lawyers, however, despite the fact that Treasury Board had itself co-sponsored the study which demonstrated that referring cases to private lawyers ended up costing more.[76]

TABLE 3

PERCENTAGE OF CASES HANDLED BY PRIVATE LAWYERS[77]

	1983-84, 1984-85 or 1985-86*	1987-88	1992-93
Newfoundland	n.a.	n.a.	n.a.
Prince Edward Island	2%	4%	10%
Nova Scotia	n.a.	11%	20%
New Brunswick	100%	100%	100%
Quebec	40%	42%	46%
Ontario	79%	87%	86%
Manitoba	70%	72%	69%
Saskatchewan	1%	<1%	1%
Alberta	100%	100%	n.a.
British Columbia	74%	83%	89%
Northwest Territories	100%	100%	n.a.
Yukon	100%	100%	100%

n.a. = figures not available.

* The first column of figures varies by fiscal year because data were incomplete for any common year. The figures for New Brunswick, Ontario, Alberta and Yukon are 1983-84. Prince Edward Island, Saskatchewan and British Columbia are 1984-85, and Quebec and Manitoba 1985-86.

Because of such staff shortages, and perhaps because of other unknown factors, the number of legal aid cases handled by staff rose by "only" 20 percent from 1986-87 to 1992-93 (which means that many of them must now be overworked), while the cases referred to private lawyers increased by 81 percent.[78] This contributed to a significant change in the attitude of

private lawyers toward legal aid, which Timothy Agg described in his 1992 review of legal aid in British Columbia:

> It is a common perception that lawyers do a small amount of legal aid work as part of their practices; they are not dependent on legal aid, but regard accepting legal aid cases as part of their professional duty and contribution to the community. The traditional exceptions are very junior lawyers who do a lot of legal aid work in order to build their practices...
>
> However, two trends alter the picture. The first is cyclical and expected: the state of the economy, and therefore the health of the private demand for legal services, can affect willingness to take legal aid referrals. In many communities which are feeling the recession, lawyers report an increased desire for legal aid business. The increased tariff has also increased legal aid participation.
>
> The second trend appears to be a permanent change: the emergence, in the larger communities, of lawyers who are working mostly or even exclusively on legal aid referrals... The interests of this group are quite different from the larger group who do not rely on tariff referrals for their primary income.[79]

The process Agg describes is a circular one. The more legal aid cases get referred to private lawyers, the more lawyers become dependent on legal aid to earn their living. The higher the number of lawyers who count on legal aid for their subsistence, the greater the pressure to increase legal aid tariffs. And the higher the legal aid tariffs, the more private lawyers want to do legal aid work, and are motivated to urge legal aid administrations to refer cases to them.

Very recently, as we will see in later chapters, several jurisdictions have taken steps, some modest and some bold, in order to try to break this vicious circle.

III. HOW GOOD ARE LEGAL AID SERVICES?

Many conditions are required to provide the best possible legal aid services. Means must be found to make low-income people realize that their problems have legal implications. They must also be made aware that legal aid exists, and be helped to surmount the psychological and other barriers preventing them from applying. Lawyers or other legal experts must be available to handle their problems. Legal aid must be open to all those who cannot afford legal costs, and offer the services which are most important to low-income people. Services must be provided in the most cost-effective manner possible to maximize their positive impact on the lives of the poor.

Recognizing that a Problem is a Legal Problem

As we saw in Chapter I, it cannot be taken for granted that low-income people are aware of their legal needs. Most of them would identify traditional legal questions such as a criminal charge or a child custody dispute as requiring legal assistance, but a much smaller proportion would know that situations such as a persistent cockroach invasion in their apartments, an imprudent purchase from a door-to-door salesman, or a denial of welfare benefits are also legitimate legal questions that have legal solutions. Least well informed about their legal needs and rights are people with the lowest levels of formal education and the highest levels of illiteracy, including seniors and people with disabilities.

A particular kind of legal education is required to counter this problem. Traditional information campaigns, which describe common legal problems and offer solutions, are useful to some low-income people but do not generally make much difference. Part of the problem is that most poor people do not relate to written or abstract material. It is also generally agreed that to assimilate legal information, it is necessary to have some minimal knowledge of the law.[80] Most middle-income people have rudiments of legal knowledge, even if it is only a feeling that "there must be a law" to prevent this or that unjust result.

The only effective way to inform poor people of their rights is to <u>show</u> them what can be done with the law.[81] We saw an example of this in Chapter I, when we described the

impact of community legal clinics in low-income neighbourhoods. Within a short time, social assistance administrators, collection agencies, landlords and policemen changed their behaviour. They became aware that poor people have rights which would be defended against arbitrariness and abuse. Disadvantaged people who witnessed these changes acquired a sense of their own rights and a feeling that maybe, just maybe, the legal system might be made to work for them too.

Community clinics achieve such results by being present and visible in poor neighbourhoods and by reaching out to support existing advocacy groups (such as tenants' associations and welfare rights groups) and to encourage the formation of new ones. Under the judicare model, private lawyers who handle a few legal aid cases along with their better-paying ones stay in their offices in the business section of town and passively wait for legal aid clients to come to them. These lawyers typically have little understanding of the problems of the poor and assume that low-income people have the same legal problems as people who are better-off.[82] The result, according to a Canadian Bar Association study, "is that the judicare model creates a channel of access for mostly criminal and family cases and a barrier to access for other types of legal problems."[83]

Under a system of staff lawyers who are not in community-run legal clinics, the question of people being aware of their legal needs depends on the number of staff lawyers and paralegals, the number and location of staff offices and whether educating potential clients is among the priorities of the legal aid plan. The two Canadian legal aid plans which rely most on staff, in Saskatchewan and Prince Edward Island, are so underfunded and understaffed that their employees have no time to handle non-traditional legal problems at all.

Knowing that Legal Aid is Available

The only Canadian survey of awareness of legal aid on the part of the low-income population was done in Quebec in 1981.[84] It found that a strikingly high level, 93 percent, had heard of legal aid. Perhaps more significant, 42 percent knew the location of the nearest legal aid office. Knowledge of the office location varied greatly by region, with urban residents being least well informed: only 26 percent of low-income Montrealers knew, compared with 80 percent in rural Gaspesie and Sept-Iles.

In its comments about the results, the Canadian Bar Association study warned that Quebec is not representative of other jurisdictions because Quebec's legal aid plan is known for its aggressive public information programs. Most other plans make only minimal efforts to improve awareness by potential clients. Because of increasing budget constraints, all plans have a strong incentive to avoid advertising because many of the new clients it would generate would have to be turned away, thereby increasing community frustration and resentment.[85] The result is that the "chronic poor," who are most likely to lead isolated lives with few if any friends or family members to advise them, probably do not know about legal aid.

Willingness to Apply for Legal Aid

Fear, ignorance and fatalism were the attitudes toward the legal system that researchers found in a study of poor farmers in Saskatchewan.[86] Many other studies found a strong relation between having a low socio-economic status and doing nothing about legal problems.[87] Poor people are least likely to file a claim with an insurance company to be compensated for damages. Confronted with consumer problems, their most common response is inaction. Faced with abuse and discrimination, they typically feel that their situation is hopeless and do not seek redress because they are afraid it will lead to more trouble. Many low-income men and women accused of criminal acts, particularly aboriginal people and first offenders, refuse to be represented by a lawyer because "there is no point." Some of them plead guilty when they might have a valid defense "to get it over with," because they are afraid to lose income or their jobs if they take time off work for a trial, or because they don't understand the serious consequences of having a criminal record.[88]

Women victims of family violence are probably the most fearful and hesitant about seeking legal assistance. Some are ashamed, or afraid of reprisals or other effects on their relationships with their spouses.[89] Many assaulted women, especially immigrant women, are extremely embarrassed at having to discuss intimate questions with strangers. Aboriginal women on reserves face the worst barriers. The Manitoba Aboriginal Justice Inquiry found that some chiefs and band councils are biased in favour of the batterers or discourage abused women from initiating any action which will lead to outside intervention by the police or legal aid.[90] In extreme cases, an Ontario study found, aboriginal women have been forbidden to leave their

communities to seek legal aid, and there are reports of some being physically removed from planes.[91]

In addition to apathy and fear, most low-income people have a strong sense of alienation from the "justice" system, which they do not relate to and do not find just at all. They feel like unwelcome intruders in a system where almost everyone in authority is male, white and middle-class.[92] Overt racism against visible minorities does occur, and basic concepts of our criminal law system, such as adversarialism, are alien to aboriginal culture.[93] Separated and divorced women who are forced to return to court time after time to collect maintenance payments have little respect for a system which protects defaulting ex-husbands and places poor mothers in this predicament. Long delays also make "justice" meaningless to many accused, especially young offenders, by breaking the link between offence and punishment.[94] Legal aid itself can also be very slow, leading some accused to say that "it can take longer to get the (legal aid) certificate than serve the time."[95]

Perhaps the most important psychological barrier preventing poor people from seeking legal aid is their dislike and mistrust of the legal profession. At best, low-income people think of lawyers as people who act, dress and talk strangely and are mostly found in intimidating environments in faraway locations requiring an "awesome trip downtown."[96] At worst, potential legal aid clients perceive lawyers as exploitive, untrustworthy, intimidating, patronizing, impatient, and rude people who are insensitive to women, persons of other cultures, and the disadvantaged in general, and who cannot communicate in a straightforward manner but insist on speaking an incomprehensible jargon.[97]

Due to experiences with the legal systems in their countries of origin, some immigrants are also extremely reluctant to trust lawyers, whom they see as being too closely connected to authority. Another frequent deterrent to seeking legal aid, according to an Ontario study of legal aid services provided by private lawyers, is the near-unanimous belief that these lawyers give better services to their fee-paying clients than to the ones they get through legal aid.[98]

Getting to Legal Aid and Finding a Lawyer

Applying for legal aid sounds like an easy thing to do. It is not difficult:

* if the office (or both the legal aid office and the lawyer's office in a judicare system) is within easy reach and is open at convenient times;

* if you are not in charge of children or other dependents who need constant care;

* if you speak English or French;

* if you are able-bodied enough to find the office(s), contact it (them) and get yourself there; and

* if you are not housebound due to illness or disability, in jail or confined in a psychiatric institution.

No estimate exists of the proportion of low-income people affected by such barriers, but as single-parent mothers, the disabled, the elderly, refugees and aboriginal people are all prominent among the poor, it is likely that the collective impact of these obstacles is significant.

What can be done to overcome these barriers?

* establish premises with child care facilities at convenient wheelchair-accessible locations, preferably in low-income neighbourhoods, and ensure that office hours are the most appropriate for the clientele;

* equip these offices with special telephone equipment for the deaf and hard of hearing, and materials on tape or printed in Braille for the visually impaired;

* hire a multicultural staff with varied language skills, and be ready to provide competent interpreters (for the deaf also) whenever necessary; and

* set up programs to visit clients who are unable to come for whatever reason, and develop outreach services (such as itinerant lawyers and paralegals) for people who live in rural and remote communities.

No survey has been done to determine the extent to which legal aid plans meet these requirements. Under judicare systems, where services are rendered in hundreds or thousands of private lawyers' offices, these accommodations are much more difficult if not impossible to achieve.

Once a person has been accepted by legal aid, there remains the question of finding a lawyer. This is not usually an issue under staff-based or community clinic models where, unless very specialized expertise is required, clients are assigned lawyers or other legal experts who work out of the same office which approves the application. It can pose serious difficulties in judicare systems, as evidenced by 1991 and 1992 Ontario and British Columbia evaluations which found that in some areas of both provinces, women with family law problems were having increasing difficulty locating lawyers willing to handle their cases.[99] Assaulted women were particularly shunned because they are "difficult clients" needing a lot of emotional support and reassurance about what is going on. Part of the problem is that there are more paying clients in family law than in criminal law, giving family law specialists more choice of taking legal aid cases or not. The legal aid fees paid to private lawyers for family law cases are also lower than those paid for criminal law.

Clients with disabilities had similar problems. Because many are "difficult to work with" and require more time and special efforts to keep them informed of developments, they reported difficulty finding and retaining lawyers.[100] Ontario agencies and organizations serving disabled persons developed a list of "sympathetic" lawyers, but this was not sufficient to solve the problem, and evaluators concluded that people with disabilities were not particularly well served by the legal aid plan. On the other hand, Ontario's services for people with disabilities were better than those of all other predominantly judicare plans.

The Ontario evaluation reported that the three main ways to increase the availability of legal aid services to low-income people would be: to increase the legal aid fees paid to private lawyers in the fields where they are now reluctant to take cases; to pass laws to allow paralegals

to do some of the work now being done only by lawyers; and to hire staff lawyers to provide the services required.[101]

Financial Eligibility

Most legal aid plans offer duty counsel services to everyone who needs them without consideration of a person's financial circumstances. These services include telephone advice to people arrested by the police and on-the-spot representation before various courts. Otherwise, people who apply for legal aid must demonstrate that they cannot afford to pay for the legal services needed to solve their legal problems. The theory behind this financial test is that all Canadians should be able to exercise their rights without impairing their capacity to keep themselves and their families adequately fed, clothed and sheltered. In practice, no two jurisdictions use the same financial yardsticks, and comparisons are difficult.[102]

All jurisdictions except New Brunswick and the Northwest Territories have official guidelines indicating levels of income beyond which applicants are not normally entitled to legal aid. Some of these guidelines are set by the provincial or territorial government, some by the legal aid plan, and some by both of them jointly. Assets are usually taken into consideration as well. The income guidelines vary with the number of persons in the family. In British Columbia, they also vary with the size of the area of residence, and in the Yukon, with the actual place of residence. Two other important variables are: whether the income indicated in the guidelines is gross income or net income; and whether the guidelines are applied strictly or loosely. Ontario also has different guidelines for services provided by community legal clinics and services provided through private lawyers.

Table 4 on the next page describes the various financial eligibility guidelines. The first two sets of guidelines list gross incomes, which are incomes before payroll deductions for income taxes, pension plan contributions and unemployment insurance premiums and deductions for certain other expenses. The amounts shown for full and automatic eligibility in the case of single people range from a low of $8,865 in Quebec to a high of $15,800 in Ontario's community clinics. For couples with two children, Quebec's guideline is still the lowest at $12,775 and the Ontario clinics' the highest at $25,550.

TABLE 4

FINANCIAL ELIGIBILITY GUIDELINES FOR LEGAL AID, 1994[103]

	Single Person	Couple Without Children	Couple With Two Children
Gross Annual Income, Inflexible			
Quebec	$8,865	$10,958	$12,775
Gross Annual Income, Flexible			
Prince Edward Island	11,695	15,852	23,200
Ontario Community Clinics			
. Automatic eligibility	15,800	21,400	25,550
. Discretionary eligibility	21,550	28,650	34,000
Manitoba			
. Full eligibility	12,000	16,000	25,000
. Partial contribution	14,000	18,000	27,000
. Full contribution	21,500	25,000	31,500
Alberta	12,620	14,430	17,350
Net Annual Income, Inflexible			
Saskatchewan	9,420	10,260	13,716
British Columbia			
. Vancouver	13,080	18,480	25,680
. Victoria	11,640	16,680	23,160
. Large towns	11,400	16,320	22,680
. Small towns & rural	10,560	15,120	21,000
Yukon			
. Whitehorse	10,260	16,620	24,660
. The Rest[104]	15,720	21,660	28,860
Net Annual Income, Flexible			
Newfoundland	4,716	6,492	7,416
Nova Scotia	12,804	17,088	23,184
Ontario Judicare			
. Automatic waiver levels	9,192	16,452	19,608
. Total allowable living expenses	18,636	29,484	38,316

The next two sets of guidelines show net incomes, which is what is left after various types of deductions are subtracted from a person's paycheque. Net incomes represent higher actual limits (substantially higher, in some cases) than gross incomes of the same amount. Leaving aside Ontario's judicare limits for the moment, we see that in the case of single people, by far the lowest net income limit is in Newfoundland at $4,716, and the highest are in Yukon outside of Whitehorse ($15,720) and in Vancouver ($13,080). For couples with two children, the low is again in Newfoundland ($7,416) and the highs are again in Yukon outside Whitehorse ($28,860) and in Vancouver ($25,680).

Flexibility complicates matters further. It makes comparisons hazardous even within each of the gross and net income categories. This is because jurisdictions with flexible limits routinely accept people with incomes above the financial guidelines in situations where applicants have heavy debts or special expenses or if the legal services they need are exceptionally costly. In Quebec, guidelines are so rigid that exceptions can only be obtained by going through an appeal process in which it must be demonstrated that refusal to grant legal aid would cause grave injustice or do irreparable harm. Compare this with the guidelines for Ontario's community clinics, which grant a single person automatic eligibility up to $15,800 of gross income, discretionary eligibility up to $21,550 in special circumstances such as high debts or expenses or important legal issues, and exceptional eligibility above that income level by appealing to the clinic's board of directors.

Ontario's judicare guidelines are in a class by themselves, with a unique two-tier eligibility test. Applicants are first assessed by comparing their net incomes to the waiver levels listed in Table 4. People with net incomes below the waiver levels are automatically accepted for services. Those who fail the waiver test go on to an alternate test, which involves showing proof of all their actual living expenses and debts. A maximum is allowed for each type of debt and expense, with the total for all categories being the "Total allowable living expenses" shown in Table 4. The effect, in cases of persons or families with large debts and expenditures, is a financial eligibility limit for legal aid that far exceeds the guidelines anywhere else in the country, reaching over $18,000 a year for a single person and more than $38,000 for a couple with two children.

The overall picture we get from Table 4 is one of extreme disparities in financial eligibility levels in different parts of Canada. A couple with two children will be rejected in

Quebec if its gross income surpasses $12,775, but will be accepted in Ontario with an income of $34,000 and more. The situation appears to be most critical in Newfoundland, Quebec and Saskatchewan. Quebec's legal aid staff report that only welfare recipients and people with no income are now eligible, leaving out minimum wage workers, the unemployed and senior citizens.[105] In one of its numerous pleas to the government of Quebec to raise the eligibility thresholds, the Quebec Legal Services Commission noted that the province's legal aid tariffs for private lawyers were raised in 1990, while eligibility limits have not changed for a much longer time - since 1985 for families and 1981 for single people.[106] This made it only too clear that lawyers have political clout and the poor do not.

Several provincial evaluations concluded that the people who are most disadvantaged by our legal aid systems are low-income wage earners (often called the working poor).[107] The problem has worsened over the years with the ever-rising cost of hiring a private lawyer. Many jurisdictions tried to cope by granting legal aid, subject to partial or full repayment, to people who would not normally be eligible. The problem is that the power to allow exceptions is usually discretionary, unpublicized and applied in an uneven manner. Alberta has the most unusual system: people with incomes above the guidelines may be accepted, but everyone who receives legal aid must repay if at all possible. One consequence was that an impoverished aboriginal man, who was widely believed to have been wrongly accused of murder and was eventually found not guilty, was billed $18,500 for legal aid services.[108]

The only successful attempt to give low-income earners access to legal services in a non-discretionary, clear and open manner is Manitoba's Expanded Eligibility Program. Initiated in 1988-89 as a federal-provincial pilot project, the program provides partially or fully refundable services to people whose incomes are slightly above the regular eligibility guidelines. For example, we see in Table 4 that Manitoba couples without children are entitled to free legal aid if their gross incomes amount to less than $16,000 a year. Those with incomes between $16,000 and $18,000 are accepted, but must repay through monthly instalments part of the value of the services they receive. Couples with incomes from $18,000 to $25,000 also get services but must fully reimburse the plan. Those with incomes above $25,000 are not eligible at all. A 1991 evaluation concluded that the Manitoba program was working well and "clearly filled a need among the working poor."[109]

What happens to all the poor and near-poor applicants who are now being rejected for financial reasons by various legal aid plans? A British Columbia study which tracked some of these people found that they reacted differently depending on the nature of their legal problems. Most rejected applicants accused of criminal offences somehow managed to hire private lawyers to defend them, which means that at least some of them must have been forced to beg or borrow (and perhaps even steal) to do so. Rejected family law applicants mostly continued without representation or dropped their cases, leaving their problems unresolved. The fate of rejected applicants for non-family civil cases is unknown, but they presumably gave up or went unrepresented as well.[110]

Finally on the subject of financial eligibility, the general opinion of experts is that user fees serve no useful purpose because legal aid clients are so carefully screened for financial eligibility and case merit that there is no abuse of legal services.[111] Manitoba introduced user fees for legal aid services in 1978 and abolished them soon afterwards when it became clear that they did not work as a revenue-generating device and they were having a strong deterrent effect on potential legal aid clients, with a greater impact on people with family law and other civil problems than on those accused of criminal offences.[112] British Columbia has had a user fee for some time, amounting to $10 for welfare recipients and $30 for other clients, but it is seldom collected because lawyers find it more trouble than it is worth, and it is due to be abolished soon.[113]

In Alberta, a Task Force on Legal Aid recommended against user fees in 1988-89 because they would "most discourage the individual that the program is attempting to assist."[114] In spite of this, the Alberta legal aid plan recently introduced a $10 application fee, and people whose cases are turned down must now pay an additional $25 to appeal the decision. New Brunswick's legal aid plan also recently introduced a $50 fee for all applications. Nobody is automatically exempt from the new user fees of Alberta and New Brunswick, but waivers may be granted on a discretionary basis in cases of severe hardship or when the applicants manifestly do not have the cash.[115]

Types of Services Covered

After the huge differences between the various legal aid plans we have seen so far, it is not surprising to find great differences in the coverage each of them provides. Table 5 on the next page gives an overview of the services offered. It indicates, for each province and territory, whether the plan handles criminal, family and other civil law matters, and whether it provides a category of services collectively described as "information, outreach and advocacy."

Table 5 shows that only the Quebec plan provides full services in all categories. At the other extreme, New Brunswick offers the least, with partial services in criminal law, no family law coverage to speak of, no other civil law services, and no information, outreach or advocacy programs. To get a better picture of the situation across the country, we will do a separate analysis of each category.

In criminal law, we saw in Chapter II that the federal government has a cost-sharing agreement with all jurisdictions under which it commits itself to paying a substantial share of criminal legal aid services that meet certain requirements. The most important of these conditions is that legal aid plans provide representation to everyone charged with an offence which can produce a sentence of "imprisonment, or the loss of means of earning a livelihood."[116] In practice, this means that legal aid must cover all indictable offences, which are the more serious ones. It also includes coverage of summary conviction offences, which are relatively minor, in circumstances where it is likely they will lead to imprisonment or the suspension of a driver's license in the case of someone who needs a vehicle for work.

All jurisdictions have adopted policies which cover these types of charges. That still leaves room for differences in coverage, because in some circumstances it involves exercising discretion in deciding which types of summary offences are likely to produce a jail sentence. Nevertheless, the fact that basic criminal coverage is the only point of uniformity in legal aid coverage is a vivid demonstration of the powerful influence of federal cost-sharing in the development of uniform services across Canada.

TABLE 5

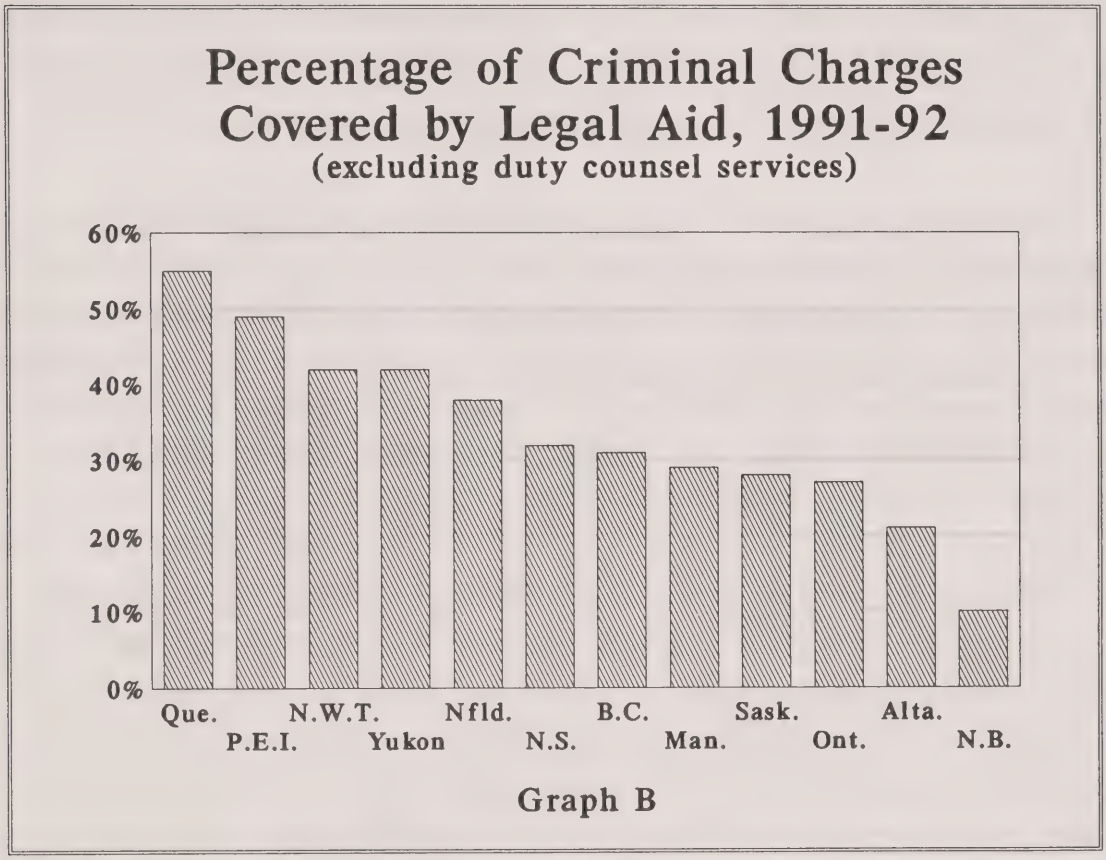
TYPES OF SERVICES PROVIDED BY LEGAL AID PLANS[117]

	Criminal Law	Family Law	Other Civil Law	Information Outreach & Advocacy
Newfoundland	Partial	Partial	Partial	No
Prince Edward Island	Partial	Very Partial	No	No
Nova Scotia	Partial	Partial	Very Partial	Some
New Brunswick	Partial	No	No	No
Quebec	Yes	Yes	Yes	Yes
Ontario	Partial	Yes	Partial	Yes
Manitoba	Partial	Yes	Yes	Some
Saskatchewan	Partial	Yes	No	Some
Alberta	Partial	Partial	Yes	No
British Columbia	Partial	Partial	Partial	Some
Northwest Territories	Partial	Partial	Partial	Some
Yukon	Partial	Partial	No	No

Only Quebec goes beyond the federal agreement and covers all or almost all criminal charges, whether or not they could lead to imprisonment or loss of means of earning a livelihood. This is reflected in Graph B, which shows the percentage of criminal charges covered by legal aid in 1991-92 in each jurisdiction (duty counsel services are not included).[118]

Quebec has the most extensive coverage, at close to 60 percent of charges, followed by Prince Edward Island and the Northwest Territories and Yukon. Administrators of the Prince Edward Island plan report that they do not cover all summary conviction offences but interpret the possibility of getting a jail term very generously.[119] Yukon used to provide representation for all these offences but ended this practice in 1994.[120] Most other provinces are around the

30 percent level. New Brunswick's coverage is so low, around 10 percent, that it raises suspicions about the province's adherence to the terms of the federal agreement. (Legal aid officials from New Brunswick have complained that this graph, produced by the federal Justice Department, unfairly underrepresents their criminal caseload because it does not count their duty counsel cases. However, duty counsel services are excluded in the graph for all jurisdictions.)



Graph B

The federal cost-sharing conditions for criminal law cases can have perverse effects. In the case of summary conviction offences like small theft, disturbing the peace or impaired driving, jail sentences are rare for first offences but are not unusual for second and subsequent offences. The result, in the jurisdictions that cover only charges likely to lead to a sentence of imprisonment (all but Quebec), is that first offenders are not represented while repeaters usually are. The Manitoba Aboriginal Justice Inquiry identified this as one of the factors contributing to the overrepresentation of aboriginal people in jail:

> ...Legal Aid will not provide counsel in [minor] cases, unless there is a likelihood of the accused either going to jail or losing his or her job upon conviction. Many Aboriginal people appear to have developed a record of relatively minor offences prior to their first incarceration. We know that in considering what sentence is most appropriate for an accused, judges are often swayed by the existence of an accused's prior record. An accused with even a short history of arrests and convictions for minor offences runs a much greater risk of being incarcerated for another minor offence than one who lacks such a record.
>
> Legal Aid's policy contributes, no doubt, to the compilation of a criminal record of minor offences for such accused. In effect, legal assistance is unavailable to otherwise eligible accused, assistance which would help prevent them from being improperly convicted, or from pleading guilty without legal advice.[121]

Consequently, the Manitoba Inquiry recommended that Manitoba's legal aid plan provide representation in all criminal matters, even if there is no risk of a jail sentence. The Alberta Task Force on the justice system and aboriginal people shared the concern of the Manitoba Inquiry but came to a different conclusion. It recommended that legal aid coverage of all summary conviction offences be extended, as a necessary affirmative action program, to all accused aboriginal people who are financially eligible, but not to everyone else in the population.[122]

Most troublesome is the inconsistency of the federal attitude toward imprisonment. On the one hand, the federal government is so concerned about the negative effects of a prison sentence that it will not fund legal aid plans unless they provide low-income people a full defence when they face a charge which could lead to jail. On the other hand, if a poor man is accused for the first time of a trivial summary conviction offence, is tried without representation and ordered to pay a fine he cannot afford, he may end up in jail for non-payment of the fine. Most jurisdictions now have "fine options" programs, under which offenders can pay off their fines by doing community work, but they do not work well for some groups, particularly aboriginal women.[123]

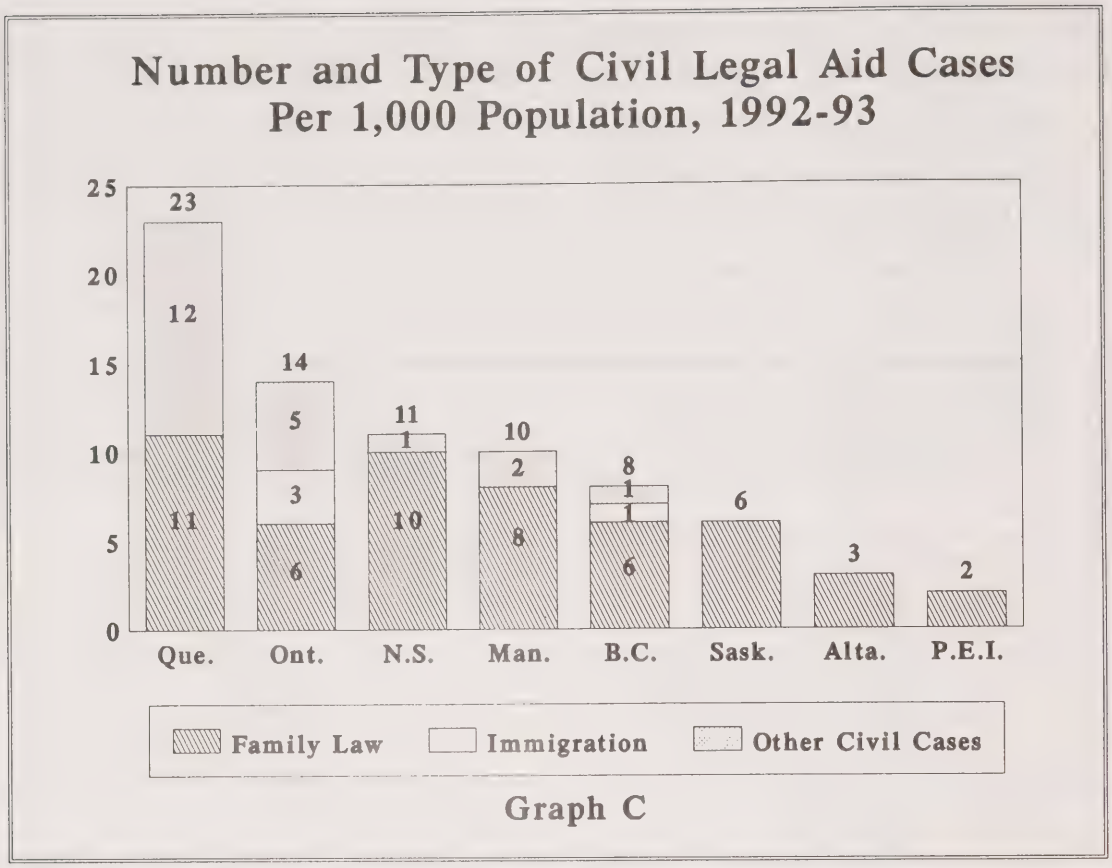
On family law, Table 5 shows that four jurisdictions report having comprehensive coverage: Quebec, Ontario, Manitoba and Saskatchewan. Many of the others do not cover uncontested divorces, or take them only if they are not too busy with other cases. Some plans only do separations and divorces when there is a pressing need to resolve matters involving support payments or the custody of children. Prince Edward Island only acccepts situations

involving domestic violence or child welfare. One explanation for the willingness of most plans to provide coverage in support matters is apparent in complaints by some legal aid lawyers that many of their family law clients are women who were coerced by welfare departments into suing their spouses or ex-spouses for support.[124] The sums collected are almost always deducted from their welfare benefits.

In New Brunswick, the provincial Justice Department employs some court-based lawyers to handle cases involving family violence and child welfare. Legal aid only accepts family law cases when there is a conflict of interest; for example, it will defend the husband of a battered woman who is seeking a restraining order against him with the help of a lawyer from the Justice Department.

As far as non-family civil law cases are concerned, Table 5 indicates that only Quebec, Manitoba and Alberta report accepting all types of cases in these areas. We saw in Chapter I that this category of services is the most significant for low-income people. The bulk of it consists of issues such as eligibility for different types of government benefits and consumer, employment and landlord-tenant disputes. In recognition of the vital importance of these types of cases for low-income people, these legal problems are collectively known as "poverty law." Non-family civil law also contains immigration cases, which include international law problems such as refugee status determination, as well as family-law-like problems where sponsored immigrants are coerced by welfare authorities into suing their sponsors for support.

Graph C on the next page shows, for each province except Newfoundland and New Brunswick, the total number of civil legal aid cases, as well as the breakdown for different types of cases, for each 1,000 people in the population in 1992-93.[125] Quebec has far and away the most extensive civil law legal aid services in the country. Its rate of civil law cases, at 23 per 1,000 people, is much higher than that of Ontario, which follows at 14, and Nova Scotia at 11. Manitoba, British Columbia and Saskatchewan come next in descending order, while Alberta and Prince Edward Island barely register on the scale. P.E.I.'s very poor showing is not surprising because it has the worst-funded legal aid plan in Canada and concentrates almost all its resources on criminal law (97 percent of its cases were in criminal law in 1992-93, compared with 43 percent in Quebec and Ontario).[126]



Graph C

The most likely explanation for Quebec's vastly superior utilization rate for legal aid services is its extensive network of offices with staff lawyers throughout the province. Provincial studies have found that the most important factor influencing the rate of use of legal aid in an area is the proximity of a permanent legal aid service point.[127] This is not surprising. We saw earlier that poor people are much more likely to seek legal aid if these services are located close to them and are therefore better known and easier to reach. The Quebec legal aid plan has 148 offices (including two community clinics) handling all types of cases in 115 cities and towns. Ontario, with its larger population, has 72 community clinics where services are provided, and they handle only cases in poverty law.

Graph C shows immigration cases in only two provinces, Ontario and British Columbia, with Ontario at three cases per 1,000 people in the population and British Columbia at one. Quebec's legal aid statistics do not specify the proportion of immigration problems its plan

handles, probably because it is very small. For one thing, Quebec's immigration rate (the number of immigrants per 1,000 in the population) is half that of Ontario, so there would be fewer applications in that area. For another, given Quebec's stringent and rigid financial eligibility test, few of the immigrants who do apply would be accepted. British Columbia now has the highest immigration rate in Canada, slightly above that of Ontario.[128]

In family law, Graph C indicates that Quebec and Nova Scotia are ahead of all the others, with 11 and ten cases respectively per 1,000 people, followed by Manitoba with eight cases and Ontario, British Columbia and Saskatchewan with six. If we exclude Saskatchewan, whose plan is underfunded and heavily concentrated on criminal law,[129] we see that the provinces that do best in providing family law services, Quebec and Nova Scotia, are the ones where the bulk of these cases are handled by lawyers on staff. In Ontario and British Columbia, family law cases are almost all referred to private lawyers. Manitoba is between the two groups, with almost three-quarters of these cases being handled by the private sector.[130]

The message that staff lawyers in decentralized neighbourhood offices produce better legal aid services also comes across in the information Graph C provides on "other civil cases," which mostly means poverty law. We saw earlier in Table 5 that Quebec, Manitoba and Alberta report that they accept all eligible applicants who come to them with problems in non-family civil law. Graph C shows that Quebec, where these cases are mostly handled by staff lawyers, has by far the highest rate of people coming for help, at 12 cases per 1,000 people. This is in spite of the fact that Quebec's financial eligibility levels probably exclude many poor people.

Manitoba, which mainly uses private lawyers for all types of cases, has a rate of only two non-family civil law cases per 1,000 people, and Alberta, where all civil cases are handled by private lawyers, has a rate too small to be shown on the graph, less than one case per 1,000 people. This indicates that low-income people in Manitoba and Alberta have not been made aware that many of their problems have legal implications, or they do not know that legal aid is available, or they are unwilling or unable to apply. Ontario, which provides incomplete services in this area through its poverty law clinics, is the only province other than Quebec which has a significant proportion of cases in non-family civil law.

Overall, it is clear that all provinces offer inadequate services in poverty law. Family law cases are almost as numerous or greatly surpass all other types of civil cases, while we

know that problems with government benefits, consumer issues and housing are much more common than separations and divorces in the lives of poor people. As a result of the recession and government cutbacks, there has been a tremendous increase in legal problems in recent years in areas such as eligibility for unemployment insurance and welfare,[131] but legal aid plans either failed to inform their potential clients that legal assistance might be available for such problems or used a variety of methods to turn down most of these applications. Some provinces simply exclude poverty law cases, while others have tests which let through only the most desperate situations. In many places, overworked staff take so long to return calls and set appointments that people give up. Quebec has extremely low financial eligibility limits and a severe shortage of specialized staff.

Shortage of staff has also put a severe crimp in outreach and community development throughout the country. An example of community development is the setting up of an organization of homeless and street people in Toronto by the Parkdale Community Legal Services clinic.[132] Such activities often increase the demand for services, leading an employee of a B.C. legal aid office to say: "We dare not reach out to some of the people who are least well served because we could not handle the flood."[133] One indication of the reduction in importance of outreach activities is the smaller role of paralegals, who are called community legal workers in some provinces. As noted earlier, the number of staff paralegals went down in recent years.[134] More traditional community participation continues, although probably at reduced levels. This largely consists of staff lawyers maintaining links with organized groups (often sitting on their boards, especially in Quebec) and making public presentations to various audiences on different aspects of the law.[135]

Legal information is particularly extensive in Quebec. The Quebec plan has an information department which produces numerous brochures, radio spots, newspaper articles and television specials and participates in a television show entitled "Justice for All." Ontario has a specialized clinic which distributes a wide range of information materials, mostly in pamphlet form. The B.C. plan administers a broad public legal information program for the general public and has also set up a Do-Your-Own-Divorce program. Other legal aid plans are involved in projects initiated by their respective Public Legal Education and Information (PLEI) associations. The Arctic PLEI, which receives the bulk of its funds from the legal aid plan, maintains a toll-free law line of about 20 volunteer lawyers who give information and advice to people throughout the Northwest Territories.[136] For reasons we saw earlier, publicity about

the existence of legal aid seems to help the poor, but information on specific points of the law is more likely to benefit middle-income people.

Law reform activities are constantly threatened in legal aid plans. Because budgets are always tight and caseloads keep rising, a strong commitment on the part of the central administration is required to enable legal aid staff to continue to engage in time-consuming law reform work. This work is important in many respects: research in the United States showed that the neighbourhood legal aid offices which were engaged in substantial law reform efforts were the ones that provided the highest-quality legal services.[137] Law reform activities are one of the hallmarks of Ontario's community clinic network. The only other Canadian legal aid plans involved in law reform work, on a much smaller scale, are those of Quebec, Manitoba and Nova Scotia.

The annual report of the Ontario clinics for 1992-93 specifies that their services include "law reform initiatives aimed at protecting and promoting the legal interests of the low-income community, including test case litigation and appearances on behalf of client groups before municipal councils, legislative committees and public commissions and inquiries."[138] The clinics jointly and individually presented 199 briefs or submissions to public bodies during the year and engaged in many other law reform activities. Five Toronto clinics organized a public photo display of poor conditions in the city's public housing in order to shame the Ontario government into living up to its responsibilities as a landlord. The clinics' central Steering Committee on Public Assistance organized a provincial forum for clinics and client groups to discuss the proposed reform of the welfare system. One clinic set up a committee to lobby against a backlog in processing claims for welfare, as a result of which new procedures were implemented. Another clinic held training sessions for community groups on ways to combat the proposed changes to the federal immigration law.[139]

By contrast, the annual report of the Quebec legal aid plan for 1992-93 indicates that it presented two briefs during the year, one on a public housing regulation and the other on proposed changes to the federal unemployment insurance law. Detailed descriptions of the activities of the plan's more than 350 staff lawyers indicate that they are involved in thousands of charitable, social and other types of organizations, but are not engaged in law reform related to their legal aid work. Overall, three lawyers report having made presentations or having participated in local meetings (organized by others) on the unemployment insurance bill. The

Hull community legal clinic, which is run by a community board, did no more legal reform work than the regular local offices. The only true lobbying action of the year took place in Cowansville, where the local legal aid personnel successfully mobilized community support to forestall the closure of their own office.[140]

Manitoba is involved in law reform through its unique Public Interest Law Centre, which is funded mainly by a grant from the fund managing interest paid on lawyers' trust accounts. The Centre acts as an advocate for groups and conducts test cases in many areas. Among other activities, it obtained an injunction to prevent a large retail store from demolishing houses in a poor area to expand a parking lot. It represented a coalition of 25 aboriginal bands which challenged the inadequate hydro-electric service provided in remote northern communities. It acted for the National Anti-Poverty Organization in its role as intervenor in the Finlay case described in Chapter I, which was narrowly lost at the Supreme Court. And it carried out major research projects on speedy civil remedies for victims of spousal abuse and on welfare practices which adversely affected recipients throughout Manitoba.[141]

Nova Scotia is involved in law reform efforts through the Dalhousie community legal aid clinic, which is affiliated with Dalhousie University. In 1992-93, for example, Dalhousie Legal Aid worked with transition houses on proposals to change provincial and federal laws to diminish violence against women. In co-operation with tenants' associations, it took on a Charter of Rights case involving discrimination against public housing tenants. It acted on behalf of complainants in many cases involving the police, and made submissions on changes to the Police Act. It intervened before the Public Utilities Board to obtain changes in the rules affecting credit, collections and disconnections by the power company. It made submissions to the Law Reform Commission on the topics of maintenance enforcement and violence against women. And it was an active participant in the Metro Coalition for a Non-Racist Society.[142]

The last category of legal aid services which should be mentioned is special programs for aboriginal peoples. The British Columbia Legal Services Society funds ten native communities to operate their legal aid offices with their own boards of directors. Legal Aid Manitoba hired native paralegals under a pilot program in 1987 to deliver broad legal services in northern Cree-speaking communities. This was very successful and is now permanent. In Ontario, the legal aid plan formed the Nishnawbe-Aski Legal Services Corporation, which is run by an aboriginal board of directors and provides legal services through private lawyers in the

northern part of the province. Some of Ontario's community legal clinics also specialize in aboriginal issues, most particularly Aboriginal Legal Services of Toronto.[143]

The Legal Services Board of the Northwest Territories is responsible for a courtworker program whose services are provided mainly but not solely by aboriginal people for aboriginal people. These workers handle tasks which can only be done by lawyers in many other jurisdictions, such as representing clients in bail and sentencing hearings, minor trials and civil matters such as custom adoptions. Native courtworker programs exist in all other jurisdictions except Prince Edward Island, Nova Scotia, New Brunswick and Saskatchewan, but they are independent of legal aid and the workers' duties are less extensive. The purpose of these services, which are cost-shared by the federal government, is to reduce the language and cultural barriers aboriginal people face in the criminal justice system. Courtworkers explain to the accused (and their families, and sometimes the community) the criminal court process as well as their rights and responsibilities, help them contact a lawyer or apply for legal aid, interview witnesses and prepare arguments to be presented to the judge who decides on a sentence. Evaluations of these programs indicate that they are successful and credible among aboriginal people.[144]

One of the reasons why poverty law services have not grown very much in spite of increasing demand and rising budgets is that most legal aid plans give priority to criminal services. Some of the arguments in support of this preference were explained in Chapter I. In addition, many jurisdictions are afraid to violate the federal cost-sharing agreement on criminal legal aid and thereby jeopardize their federal subsidies. The result is that criminal legal aid, which benefits a tiny proportion of low-income people, gets the bulk of the financial resources in more than half of the jurisdictions.[145] Support for services in poverty law, which has the most potential to improve the lives of the poor, is minimal almost everywhere.

Timothy Agg denounced this situation in his evaluation of legal aid services in British Columbia (using the term "administrative law" when referring to civil cases involving government decisions):

> A legal services system which does not provide an adequate level of civil and administrative law coverage is failing the very people whom the system is supposed to benefit. Any needs assessment, from a client perspective, must place

> these areas of law at least equal in importance to family law, and substantially more important than criminal law.
>
> This applies numerically since, for example, there are far more people in receipt of welfare, unemployment, compensation or pension assistance than receive criminal legal aid. Severity of consequence can also be greater; for example, the long term repercussions of a worker's compensation can be more significant to the client than many criminal charges.[146]

The most bizarre priorities in coverage are those of the Quebec legal aid plan, which grants full legal representation for the most minor summary conviction offences, even if the risk of a jail sentence is very remote. As a result, Quebec's plan automatically represents hundreds of first offenders who are most likely to be sent off with a judge's warning and whose worst possible sentence is a small fine. At the same time, the plan turns away hundreds of poor women and men with incomes just above welfare levels who risk losing their jobs or their homes or even their children for lack of someone to defend their rights.

Quality and Cost-Effectiveness of Services

Legal aid is cost-effective when it produces the best possible services for the lowest possible cost. Many questions are raised when we see that legal aid expenditures in Ontario ($29.74 per person in 1992-93) are almost twice as high as legal aid costs in Quebec ($15.73 per person).[147] This seems incomprehensible, as we have just seen that the legal aid services provided in Quebec are significantly more comprehensive than those of Ontario.

The main reason for the huge difference in costs is that Quebec uses staff lawyers for most of its legal aid cases (54 percent of cases in 1992-93) while Ontario has a judicare system under which the vast majority of cases (86 percent) are handled by private lawyers.[148] The debate between the supporters of the judicare and staff-based models of delivering legal services has been going on since the first years of legal aid services in Canada. It started as an ideological debate, but over the years it gradually became "a simple battle over turf and self-interest."[149] The provinces with the largest judicare component (New Brunswick, Ontario, Alberta and British Columbia) are the ones where legal aid is under the direct or indirect control of the lawyers' associations.

Evaluations done in several provinces found that it cost their legal aid plans from 65 percent to 126 percent more to use private lawyers instead of staff lawyers to handle comparable criminal cases.[150] The studies concluded that the main causes of the discrepancies in costs were the greater amount of time private lawyers reported spending on each case and, more important, the difference between the fee tariffs for private lawyers and the salaries paid to lawyers on staff. No differences were found in the difficulty or complexity of the cases handled by both groups.[151]

There are two main methods of payment to private lawyers doing legal aid work: an hourly rate with or without a maximum allowable number of hours for various procedures or types of cases, and a set or "block" fee for specific procedures or types of cases. In practice, many legal aid plans use a combination of both methods and have two or three different sets of rates based on the lawyers' years of experience. There are often different levels of rates for different types of cases, with criminal cases paying more than civil ones.

This type of payment encourages lawyers to multiply procedures or to report more time than they have actually spent on a case (a practice called "bill padding" by some and "strategic billing" by others).[152] Such practices would account for part of the longer time private lawyers report having spent on each case. Scheduling of cases is also much more efficient under a staff-based system. Private lawyers frequently spend several hours in court waiting for one client's case to be heard. During that time, legal aid lawyers typically handle several of the cases scheduled.

Even without undue multiplication of procedures or billing excesses, fees for private services tend to be very high. To get a clearer idea of the cost of criminal law services in different jurisdictions, the authors of a federal Justice Department study estimated the potential gross income lawyers could have earned if they worked full-time for legal aid in 1991-92. The results, in Table 6 on the next page, give estimates for three sets of caseloads. The first caseloads include 180 cases a year, which is the number of legal aid cases some lawyers were handling in a study done in British Columbia. The second caseloads contain 200 cases, based on U.S. studies which found caseloads of 200 to 300 criminal cases a year to be normal. The last column uses 300 cases, which is the maximum caseload federal Justice Department staff lawyers handle.

Table 6 shows an enormous range of annual earnings depending on the caseload and the lawyer's province or territory. The lowest earnings, at $24,234, were for lawyers handling 180 cases a year in Prince Edward Island. The highest, at $358,043, were for lawyers with 300 cases in New Brunswick.

TABLE 6

ESTIMATES OF FULL-TIME LEGAL AID EARNINGS OF PRIVATE LAWYERS FOR CRIMINAL CASES, 1991-92[153]

	180 Cases	200 Cases	300 Cases
Newfoundland	$ 69,673	$ 77,415	$ 116,122
Prince Edward Island	24,234	26,927	40,390
Nova Scotia	85,512	93,902	140,854
New Brunswick	214,826	238,695	358,043
Quebec	82,836	92,040	138,060
Ontario	194,516	216,129	324,193
Manitoba	80,345	89,272	133,908
Saskatchewan	46,395	51,550	77,325
Alberta	99,794	110,882	166,323
British Columbia	128,707	143,008	214,512
Northwest Territories	108,830	120,922	181,383
Yukon	118,518	131,626	197,530

As it turns out, even the highest of the estimates in Table 6 are lower than the reality. In British Columbia in 1991-92, the highest legal aid billing from a criminal lawyer amounted to $363,730, compared to a maximum of $214,512 for 300 cases shown in Table 6. (The top family law B.C. billing was for $321,800.)[154] In Quebec, two private lawyers received more

than $200,000 from legal aid in 1991-92, and two received more than $300,000 in 1992-93.[155] The annual report of the Ontario Legal Aid Plan for 1992-93 shows that 137 lawyers received more than $200,000 during that year. The director of the plan says he does not know how many of these lawyers received more than $300,000.[156]

All this demonstrates that the delivery of criminal legal aid services through private lawyers is a very expensive proposition. Table 6 and the billings from British Columbia, Quebec and Ontario cited above actually underestimate real costs. They take no account of administrative overheads, which are substantially higher in a judicare model than in a staff-based system because additional personnel is needed to verify and pay lawyers' invoices. The conclusion of the Justice Department study was that provinces using the judicare model provide much less criminal legal aid for what they spend.[157]

The difference in cost between staff and private lawyers is also considerable in poverty law. Quebec studies performed over several years found that using private lawyers for these cases cost from 79 to 191 percent more.[158] The cost advantage of a staff-based system is least evident in family law. Quebec and Manitoba studies found that staff lawyers were cheaper, but the gap was smaller than in other types of cases. It was smallest for divorces and separations, with private lawyers costing from one to 20 percent more. The saving from using staff was greater for other family law cases involving issues such as custody, maintenance and child protection, with private lawyers costing between 23 and 77 percent more.[159] One reason for the smaller differences compared with criminal law is that there was less discrepancy in the time staff and private lawyers reported spending on family law cases. Another reason is that tariffs for private lawyers are lower for family law, producing incomes closer to those of staff lawyers who handle similar matters. Family law lawyers have long been pressuring legal aid plans to increase their tariffs to the level of the criminal ones. As criminal lawyers are almost all men and a substantial proportion of lawyers who practice family law are women, it has been suggested that the difference in tariffs between these two fields may be another instance of discrimination against women in the legal system.[160]

In answer to private lawyers who complain that the difference between legal aid tariffs and the normal cost of services charged to paying clients is unfairly large, Timothy Agg wrote that tariffs should be lower because payments from the legal aid plan are guaranteed. Agg also points out that legal aid tariffs may themselves be an important factor in setting market

rates.[161] In other words, if legal aid ceased to exist and the thousands of lawyers who earn money from it were forced to compete harder for paying clients, the normal cost of all legal services might drop like a stone.

The substantial differences in costs for criminal cases between the judicare and staff systems might be overlooked if it could be demonstrated that private lawyers provide better services. In fact, all the evaluations (two in British Columbia, one in Saskatchewan and one in Manitoba) concluded that criminal law services provided by staff lawyers produce significantly better outcomes. Civil law services are almost impossible to evaluate, because the facts vary greatly from case to case and it is difficult to define what constitutes a desirable result. In criminal cases, desirable outcomes are obvious: criminal clients prefer acquittals to convictions, and non-jail sentences to jail sentences.[162]

All four comparisons of criminal legal aid services rendered by private and staff lawyers reached the same conclusions: staff lawyers and private lawyers produced similar rates of guilty verdicts for comparable cases (including both those who pleaded guilty and those who were found guilty), but the clients of staff lawyers drew significantly fewer jail terms than those of private lawyers. The clients of staff lawyers were more likely to receive probation or to be fined.[163]

The studies also found that staff lawyers pleaded their clients guilty more often and more quickly. For a generation brought up on television courtroom dramas which give the impression that a good lawyer never admits a client's guilt and fights to the end, these findings may seem contradictory. In reality, the judicare system's incentive to have clients plead "not guilty" - thereby producing more procedures and higher lawyers' fees - appears to work against the interest of clients. The main reasons for the better outcomes of cases handled by staff lawyers, the studies concluded, were that staff lawyers are more specialized and have better and closer relationships with Crown prosecutors. This leads to more frequent discussions with prosecutors, resulting in more bargaining and agreements on guilty pleas.[164]

This pattern of "negotiated justice" was more satisfactory for all parties. The clients did not have to go to jail. The legal aid staff lawyers did the best job for their clients cheaply and in the quickest time. Crown prosecutors and judges were saved from having to mobilize the police and court resources which would have been required if a trial had taken place. A B.C.

survey of judicare-staff comparisons pointed out that the savings involved by using staff lawyers in criminal cases go far beyond legal aid. Fewer trials and fewer people sent to jail means fewer prison costs and maybe, in the long term, savings in court personnel and buildings.[165]

The other side of the coin is that overworked legal aid staff lawyers may be tempted to pressure their clients into pleading guilty when they have a valid defence to avoid the time and trouble of going to trial.[166] This is not an idle risk, as evidenced by many studies in different provinces which report that criminal legal aid staff lawyers are very good - as good or better than their private counterparts, according to the experts - but that some of them have "inhuman workloads."[167] To avoid deterioration in service, it has been argued, it is essential not only to maintain adequate staff levels, but also to keep the capacity to refer cases to private lawyers during periods of overload.[168]

Overall on the judicare-staff debate, the legal aid committee of the Canadian Bar Association conceded that for the same cost per case, criminal legal aid services provided by staff lawyers produce superior outcomes.[169] The same cannot be said of the Law Society of Upper Canada, the Ontario lawyers' association which runs the Ontario legal aid plan. The Society launched numerous attacks on the studies which found that staff criminal lawyers give better services, and has argued that their findings are invalid and should be ignored.[170] At the same time, the Ontario legal aid plan continues to oppose all proposals to set up pilot projects in criminal law in that province to test these questions.[171]

The Ontario legal aid plan, along with other plans which use the judicare model, also decided to ignore the many concerns expressed in recent years about the quality of legal aid services provided by private lawyers in different parts of the country. Evaluators point out the almost total lack of quality control in judicare systems, with any lawyer being able to take any type of case, whatever his or her knowledge and experience. A British Columbia study said, using a health care analogy, that such a system "presumes every practitioner to be a neurosurgeon."[172]

An 1991 Ontario survey of lawyers found that the data it had collected on the competence and quality of the work of private lawyers doing legal aid work were disturbing: 35 percent of the private lawyers who took legal aid cases and 53 percent of their colleagues in similar fields who did not take cases thought that the lawyers who handled legal aid cases were less

competent; 42 percent of private lawyers who did legal aid work and 56 percent of those who did not estimated that the work private lawyers did for their legal aid clients was of lower quality than the work they did for their fee-paying clients.[173] This confirms the impression of Ontario judicare clients, mentioned at the beginning of this chapter, that they had received second-class services compared to their lawyers' paying clients. The authors of the Ontario survey wrote that:

> ... we recommend a significant strengthening of quality control mechanisms within the Ontario Legal Aid Plan. The unwillingness of the Plan to set high standards for membership on a legal aid (referral list) as well as for guaranteeing the quality of individual legal cases can no longer be justified. Legal aid clients are entitled to knowledgeable and committed legal representation.[174]

When the Alberta Task Force on the impact of the criminal justice system on aboriginal peoples received a barrage of complaints about the poor quality of the legal aid services provided by private lawyers, it transmitted copies of these grievances to the groups which should be most concerned. The Legal Aid Society of Alberta replied that "Legal Aid does not see its role as judging the competence of lawyers."[175] The Criminal Trial Lawyers Association declined to comment. The Legal Aid Committee of the Law Society (the lawyers' association) answered that "the market place will speak, especially given the close-knit nature of Native communities."[176] The Task Force reacted as follows:

> The market place may well speak, but judging from our examination of the situation, it does not speak very loudly or often when issues arise between members of the legal profession and Aboriginals. In such situations, it must be remembered that persons who receive Legal Aid are poor, often have little education, and are generally ill-equipped to complain about a lawyer who has represented them in court. The Task Force was told of an instance in which an Aboriginal person who complained about the service received from an individual lawyer was sued by the lawyer who was the subject of the complaint... the Law Society of Alberta declined to get involved because it viewed such situations as issues between lawyers and their clients.[177]

Concerns have also been expressed about the quality of the services provided by private lawyers who handle huge legal aid caseloads. A British Columbia lawyer noted that "the more you pay, the more you worry about service quality."[178] A 1993 Quebec Bar Association brief reported that the Bar is worried about the fact that in Montreal, two percent of the lawyers who

handle criminal legal aid cases collected almost 50 percent of the total sums billed to legal aid, and that similar situations exist elsewhere in the province. Huge caseloads are usually achieved by having referral arrangements with policemen or police stations, the brief wrote, casting serious doubts on the lawyers' independence and commitment to their clients.[179]

The most frequent argument of judicare supporters against hiring staff lawyers to handle legal aid cases is that it would compromise the rights of the poor because they would no longer be able "to retain their lawyer of choice."[180] Choice is extremely important, they say, because trust is crucial in a client-lawyer relationship and people are more likely to trust lawyers they choose themselves. Another oft-mentioned reason in favour of choice is that legal aid recipients who cannot choose their own lawyers feel they are receiving a second-class service which is different from the legal services received by people who can pay. Part of that argument is that the right to fire or change lawyers if one is dissatisfied is even more important than the initial choice.[181]

On the other side, supporters of staff-based legal aid systems say the choice issue is a red herring for the simple reason that the vast majority of poor people do not know any lawyers. The notion that a poor client can make a meaningful choice from a list of several thousand lawyers in a large city has been dubbed "an exercise in fantasy."[182] According to this point of view, the choice argument is not real but was manufactured by judicare lawyers casting about for politically attractive ways of camouflaging their strong financial interest in maintaining an all-judicare model.

To understand what is at stake in this dispute, it is necessary to know that the right to choose one's lawyer is never absolute. No legal aid plan gives the right to choose any lawyer in the province or territory, and choice can be restricted by the small number of lawyers in an area. Similarly, having a free choice of one's lawyer does not mean being able to take the best lawyer in the field because, except for extraordinary cases attracting a great deal of attention, the best lawyers in Canada refuse to take legal aid cases; they can make a great deal more money representing paying clients. In Canada in 1992-93, only 25 percent of "active" lawyers took cases from legal aid.[183] An Ontario study which looked only at lawyers who handled the type of work commonly done for legal aid found that participation varied greatly with the place of residence: only 29 percent did legal aid work in metropolitan Toronto, compared with 85 percent or more in small communities. The study also found that private lawyers who took legal

aid cases were significantly less experienced, less successful and, according to many lawyers surveyed, less competent than other lawyers in the same fields.[184]

Surveys have also demonstrated that most low-income people would not know what lawyers to choose to handle their legal problems and would prefer not to have to make a choice. The best of these studies, done in Quebec in 1981, questioned a representative sample of low-income people about the type of lawyer they would want if they had a legal problem. Almost three-quarters (71 percent) answered that they would prefer a legal aid staff lawyer, 23 percent said they would choose a private lawyer and the rest gave other answers. A 1983 Nova Scotia survey of legal aid clients found that 51 percent preferred a staff lawyer and 19 percent a private lawyer; 30 percent said it made no difference. The strongest desire for private lawyers was expressed in a 1988 study of legal aid client satisfaction done in Saskatchewan, whose plan almost never grants that choice. Among people who had received services from staff lawyers, 74 percent reported being very satisfied or satisfied, but a third said they felt their cases would have had better outcomes if they had chosen their lawyer. Overall, the evidence shows that one third at most of potential legal aid clients want to choose specific private lawyers, and that clients with criminal problems are more likely to do so. On the other hand, it was found that some people are deterred from seeking legal assistance by the idea of having to make such a choice.[185]

What all this means is that if poor people had a free choice of the legal aid delivery model they want, the result would resemble the mixed systems now in use in Quebec and Manitoba, which have a strong staff component as well as the right to choose any outside lawyer willing to take the case. To respect clients' choice better, however, the staff component of both the Quebec and Manitoba legal aid plans would have to be substantially increased. The Quebec plan has become so understaffed that the lawyers' association recently called on it to hire more lawyers in order to maintain clients' free choice.[186] Manitoba's ratio of staff lawyers to population is much lower than that of Quebec, raising serious doubts that the high proportion of cases which are handled by private lawyers in that province (69 percent in 1992-93) reflects the clients' real choice.[187] Another factor which has played a role in increasing the proportion of referrals to private lawyers is the ever-expanding supply of new lawyers who are aggressively pursuing new clients while overworked staff lawyers are trying to limit their caseloads.

The last point, but not the least, to be considered on the subject of choosing one's legal aid lawyer is whether it is worth maintaining an important private component in legal aid plans for the sole reason that a small proportion of clients like the idea. As experts have pointed out, these preferences for particular lawyers are purely symbolic as extremely few clients are able to assess lawyers' skills.[188] The question that should be asked is whether making a minority of clients feel better is a sufficient reason to justify keeping a system which provides inferior outcomes for such inflated costs that legal aid services have to be restricted to filling only a small fraction of the need.

In part because of the failings of the judicare system, and in larger part to save money, many legal aid plans have recently made changes to their methods of delivering legal services.[189] The most radical reorganization is in British Columbia, whose goals for 1995 include hiring staff lawyers to handle 30 percent of its criminal law cases and 20 percent of its family law caseload. If this is successful, the plan calls for as many as half of all cases to be dealt with by staff lawyers in future years. A British Columbia legal aid official expressed doubt that this would come about, however, saying that "a year is a long time in politics."[190] Elections are expected in British Columbia in 1995.

More modest moves toward the staff model were also made in other provinces. The Ontario Legal Aid Plan is sponsoring several pilot projects, including a refugee law office with staff lawyers which is already open and three staff family law offices to be set up in different cities. One of the family law offices is specifically designed to allow comparisons between the staff and judicare models of delivering services. On the other hand, after repeatedly insisting that the choice of one's lawyer is "a fundamental principle of democratic justice,"[191] the Ontario plan recently abolished the rights of clients to change lawyers in criminal, civil litigation and refugee matters except for "extraordinary circumstances" and has restricted it to "one change of solicitor for good reason" in family law (where women had previously complained that it was very difficult to change lawyers when they were theoretically allowed to do so without justification).[192] In Alberta, the legal aid plan is sponsoring pilot projects using salaried lawyers and some paralegals to deal with cases involving young offenders. In the Northwest Territories, the legal aid plan added several salaried lawyers to its staff in 1994.

Yukon went from a traditional judicare system to a system where legal aid cases are divided into blocks which are contracted out to law firms for a set price. In 1994, two-thirds

of Yukon's cases were handled through such contracts and a quarter by lawyers on staff. Similarly, the Manitoba legal aid plan contracts out blocks of young offender cases to private firms who bid for them. In addition, Manitoba awarded a contract to a private firm to deliver criminal and family law legal aid services in Portage la Prairie, where services had been poor but the legal aid plan did not feel there was enough work to justify setting up an office. To the extent that contracting out defines legal aid as including only criminal and family law cases, it will certainly not make poor people more aware of their needs in poverty law.

IV. HOW LEGAL AID CAN BE IMPROVED

Many people believe that the legal needs of the poor are so immense that if every lawyer in Canada worked full-time for them, they would still need more representation.[193] This may be true, but it does not relieve legal aid plans of their responsibility to achieve as much as possible with the resources at their command. This is not happening now. Clients are taken on a first come, first served basis, with little or no attempt to understand the collective nature of their problems. Activities which would educate low-income people about their legal rights and needs are kept to a minimum. Because there are too many clients, arbitrary means of keeping them away are used, most frequently harsh financial limits and the exclusion of poverty law. The result, forecast by many experts, is that legal aid has become an expensive guaranteed employment scheme for lawyers which does almost nothing to help solve the problems the poor.[194]

What should be done to improve the situation? All legal aid plans should deliver their services in the most cost-effective way possible, including using paralegals for all tasks which they can do as well or better than lawyers. Non-traditional solutions such as mediation or diversion should be sought whenever feasible, and self-help should be fostered as much as possible. Legal aid plans should be directed and managed by people who have the interests of the poor at heart and who will support adequate quality controls. The current federal-provincial cost-sharing agreement on legal aid should be replaced by a new one to ensure stable funding and encourage cost efficiency. Changes should be introduced to abolish imprisonment for fines except as a last resort. And preventive measures should be taken to reduce disputes and diminish crime.

Using the Most Cost-Effective Delivery Systems

Throughout this report, we have seen that legal aid systems which use staff lawyers are more efficient and better for low-income people than judicare systems which use lawyers in private practice. Judicare plans do nothing to make poor people aware of their legal problems, with the result that they are most likely to produce cases only in criminal and family law. Decentralized staff offices established in poor neighbourhoods are psychologically and physically

more accessible to low-income people, especially if their staff maintains strong links with the community. Staff lawyers develop more expertise in the problems of the poor. In criminal law, salaried lawyers are considerably cheaper than their private counterparts and provide services which are superior in many respects.

Given these facts, any legal aid system that does not seriously consider using staff lawyers as its main system of delivery of services is ignoring the needs of its actual and potential clients. This does not mean that staff lawyers should be used in all instances. Studies have found that judicare may work better in smaller communities and rural areas, because they lack the volume to justify full-time staff and have fewer lawyers to choose from.[195] Systems of contracting out blocks of cases to private firms, such as those used in Yukon and Manitoba, may be the best idea in certain situations. Some people believe that choice of counsel should be kept for serious criminal charges where rapport with one's lawyer is important.[196] Legal aid plans should have objective studies done to determine what delivery model is best for different circumstances.

A legal aid plan whose main goal is to serve the interests of its clients should also ensure that "No job should be done by a lawyer that could be done equally well by someone else at a lower cost."[197] Paralegal workers can do many tasks as well as if not better than lawyers, including representing clients before many administrative tribunals and certain courts.[198] Frederick Zemans, former director of Toronto's Parkdale community legal clinic, wrote that

> The use of non-lawyers in the delivery of legal services is one, if not the most important, vehicle for ensuring that the citizens of our society who cannot afford to purchase the services offered by lawyers are not denied access to justice... the translation of the ideal of equal access before the law into a reality requires opening the legal services market to alternative suppliers and entrusting these suppliers with the maximum degree of independence that is consistent with adequate and competent service.[199]

In legal aid plans in Canada, however, the role of paralegal workers is very small and has diminished over the years. According to Statistics Canada, 279 paralegals were employed by legal aid plans in 1983-84 and 267 in 1992-93.[200]

The main reason for the limited use of paralegal workers is the continuing opposition of lawyers' associations, which want to restrict the role of paralegals to the performance of subordinate tasks under direct lawyer supervision. Opposition was weaker in the 1970s, when legal aid funding was less secure and few lawyers were willing to work in areas such as workers' compensation and social assistance. It hardened as the supply of young lawyers continued to rise, with the number of lawyers per 1,000 people in Canada going from 0.76 in 1971 to 1.69 in 1986.[201] Manitoba officials recently noted that their lawyers' association is staunchly opposed to the use of paralegals to provide services in remote northern areas, even though no lawyers are willing to do the work.[202]

Ironically, at the same time that paralegal services for the poor in Ontario's community clinics were being cut back, these same services were increasingly being used by the non-poor population. The 1990 Ontario Task Force on Paralegals reported a huge growth in the independent paralegal profession since the 1970s and commented that it had probably been inspired by legal aid itself.[203] The task force found that as many as 750 independent paralegals carried on business in Ontario and that they were regularly hired to handle a wide range of relatively minor legal services, including traffic offences (former police officers seem to specialize in this), uncontested divorces, small claims, simple wills, summary conviction offences under the Criminal Code, immigration matters, landlord-tenant disputes, and representations before a variety of administrative tribunals on subjects such as unemployment insurance and workers' compensation.

According to the task force, these services were generally good, they were greatly appreciated by the public and they should be allowed to continue. The only area in which it feared possible harm to clients was uncontested divorce, where it recommended that clients should first be required to obtain independent legal advice. To protect the public and ensure greater uniformity in qualifications, the task force recommended a registration system for paralegals which would only accept people who had completed a two-year course of study at a community college or its equivalent in education or practice.[204]

Since paralegal services are good enough for paying clients, it seems ludicrous for legal aid plans to insist on using only lawyers to perform these same tasks. As lawyers are much more expensive and funds for legal aid very limited, many of these services cannot be provided at all. Such an outcome is obviously not in the interests of the poor.

The other main issue relating to paralegals is that the current, very narrow definition of "legal services" in all legal aid plans produces false economies and bad services.[205] This is most striking in family law. Many lawyers complain that family law clients (mostly women) are difficult and waste their time with demands which are really calls for emotional support. For their part, many female clients complain that lawyers do not listen, they are insensitive and they do a poor job of explaining what is going on. The staff and volunteers of community groups working with women, such as shelters for abused women, women's centres and multicultural service centres, report that they have to do a great deal of work to help women with family law problems: helping them fill complicated legal aid forms, explaining to them what lawyers are saying, encouraging them and so on.[206]

Instead of a system which leaves everyone dissatisfied and ignores the clients' emotional needs, family law cases could be handled by teams which would combine social work and legal skills.[207] For example, initial interviews and ongoing contact with clients could be the responsibility of paralegals with training in social work and law, who would be sympathetic listeners trained to elicit the necessary facts. The summaries of facts would then be passed on to lawyers, whose job would be to advise and proceed on legal points. The Manitoba legal aid plan reports that it is setting up a family law clinic along these lines.[208]

Variations of this method have been recommended for all types of legal services, using different combinations of lawyers, paralegals and lay advocates with assorted skills for different cases and activities, including public education and community involvement. Former U.S. Attorney General Nicholas Katzenbach strongly supported such a team approach to the legal problems of the poor:

> Not every injury requires a surgeon; not every injustice requires an attorney. We need what is, in effect, a new profession - a profession of advocates for the poor made up of human beings from all professions, committed to helping others who are in trouble. That job is too big - and I would add, too important - to be left only to lawyers.[209]

In fact, there is nothing revolutionary about the idea of paralegals and lawyers working together as a team. Surveys have shown that it is not unusual for paraprofessionals in private law firms (who are called "law clerks" in some provinces) to gather facts and interview paying clients. This optimizes lawyers' time and increases the profits of the firms.[210]

Seeking Non-Traditional Solutions

While poor people often do not recognize that they have a legal problem, lawyers tend to think that the solution to most problems is litigation. The risk is that legal aid services may direct low-income people to use litigation to settle disputes when better methods exist or could be developed.[211] Concentrating on their own huge caseloads prevents legal aid workers from making effective use of other community resources. Legal aid providers also have difficulty understanding that the most important thing they can do to empower poor people is to give them the tools to solve their own problems.

The two most common alternatives to courts to settle disputes are mediation and arbitration. In mediation, the parties to a dispute negotiate a settlement themselves with the assistance of an impartial third person. In arbitration, an impartial third person makes a decision which is binding on both parties. Mediation is often used in family law situations, while arbitration is more frequent in commercial and labour disputes.[212] Studies have shown that such methods give better results than going to court. In family law, the adversarial court process exacerbates conflicts and often ignores the real or underlying issues. It also produces "winners and losers," which can be inappropriate when the parties must have an ongoing relationship as parents.[213] Mediated agreements are also more likely to be respected than imposed ones.[214]

The extent to which legal aid clients have access to these alternative methods is not clear. The National Review of Legal Aid surveyed the plans to find out if their lawyers used such techniques, and only a few indicated that they do.[215] Mediation and conciliation do not have to be done by lawyers, however, and most governments offer these services in some form, either through the courts or through social services departments. Some programs are free and some are not. In Quebec in 1994 and in British Columbia in 1991, women's groups made representations asking that legal aid plans pay the cost of mediation done before cases get to court.[216] According to legal aid expert Timothy Agg, mediation does not necessarily cost less, but it produces more satisfactory services.[217]

People should never be pushed or coerced into mediation against their will. It is not appropriate when one of the parties has much less bargaining power than the other, for example, a battered wife who is so afraid of her husband that she will agree to anything. Prior legal advice is important in all but very simple cases to establish the real starting positions on each

side. Mediation agreements must also be written very carefully, because poorly drafted or incomplete agreements could prove difficult to enforce or modify if their terms are not respected.[218]

The potential of alternative methods of resolving disputes was demonstrated at the Windsor-Essex Mediation Centre, a pilot project in operation from 1981 to 1984. The centre offered mediation in family situations, in neighbourhood disputes and in small claims. Its mediators were all trained volunteers, mostly social service professionals and lawyers. Evaluations indicated that the centre was highly successful, with three-quarters of cases resolved and 90 percent of clients very satisfied with the outcome. In spite of this, funding was not renewed and the centre was closed.[219]

One of the reasons the centre's funding was not renewed was the belief that it was too successful, bringing in new clients who would normally not bother and "widening the net" for catching problems to be resolved.[220] When legal aid plans were recently surveyed for their views on this, they gave different answers. Some thought that mediation might increase cases and bring trivial matters into the system. Others believed that alternative methods would not affect the volume of cases brought to legal aid. The Yukon plan answered that mediation costs less than litigation, so even if it did bring more clients, there might be enough money to help them.[221]

Another type of alternative measure is "diversion" for first offenders in the criminal justice system. This method literally "diverts" some people, especially young people, away from the court system before charges are laid and refers them to a variety of community-based groups, such as Manitoba's aboriginal youth committees. The committees devise options such as victim-offender reconciliation and restitution, abstention from alcohol or drugs, counselling or community service work. The offenders must consent to the measures proposed. The Aboriginal Justice Inquiry of Manitoba supported this approach for many reasons. It was concerned that bringing young people into the criminal justice system might turn them into or brand them as criminals. It believed that rehabilitation would produce better results than "warehousing" the young. It thought greater community and victim involvement were desirable. Ultimately, it felt that diversion would reduce crime.[222] When diversion is successful, court cases are averted and legal aid costs are reduced.

While there is considerable support for diversion and similar programs in aboriginal communities, aboriginal women have expressed concern with using these methods in cases involving family violence and sexual offences. Many feel that violence against women is too serious for the typically mild solutions proposed and that soft treatment is unlikely to discourage offenders from committing the same crimes again. Some believe that the members of youth committees, who are generally panels of elders, are not knowledgeable enough about the dynamics of family violence or sexual abuse to be capable of finding workable solutions to the problems. Women are also worried that panel members will not address the victims' need to be protected from harm.[223]

On the subject of making effective use of other community resources, Timothy Agg noted that a multitude of advocacy organizations have sprung up in recent decades, at least partly in reaction to the failure of legal aid to provide adequate services in poverty law. These groups include shelters for abused women, women's centres, anti-poverty organizations, native organizations, seniors groups, multicultural service agencies, human rights groups, agencies working in criminal justice and many others. Both Agg and the authors of the 1991 Ontario legal aid evaluation describe the numerous paralegal services these groups provide to their clients, making them an "invaluable resource" to legal aid plans.[224]

The problem is that many advocacy groups cannot be counted upon as a stable source of legal aid advice to low-income people because their existence is precarious and the legal advice they provide is uneven. Many of these organizations survive from month to month on patched-together grants. And while some of the advocates who staff them or do volunteer work for them are very knowledgeable about their legal specialties, they generally have little formal training and little access to legal supervision or help. Their strength is that they provide very personalized, direct and sensitive services to particularly vulnerable groups which are difficult to reach through traditional legal services.

To make these valuable resources more stable and improve the quality of their services, Agg proposed that "the Legal Services Society and community advocacy programs ... consider a closer, more formal relationship, including staff funding and access to training and legal supervision."[225] A similar approach to providing legal advice in non-legal-aid settings would consist of the legal aid plan training people from social service agencies to answer specific legal questions. The next step in that direction is to pressure governments to set up special advocacy

agencies to help vulnerable groups. In addition to human rights commissions, these include bodies responsible for the collection of maintenance payments and Ontario's new Advocacy Commission, which was given the mandate to defend the rights of people with physical or mental disabilities.

Finally, it has been said that the hallmark of good legal aid services is that the lawyers do not do anything for clients that clients can do or can be taught to do for themselves.[226] The category of legal aid cases which is most amenable to self-help is divorce. As we saw in the previous chapter, many jurisdictions do not provide full legal services in this area. The British Columbia legal aid plan has set up a Do-Your-Own-Divorce program. It consists of referring clients to a legal advice clinic, where law students assist them in preparing and serving the necessary documents. A lawyer is appointed to represent the client in court.

A more original approach was used in South Australia. The legal aid plan eliminated assistance for most divorces, keeping only cases where applicants could not cope by themselves because of custody or property disputes or special problems such as language barriers or geographical remoteness. Other applicants were referred to do-your-own-divorce classes organized by legal aid, in which they were given general information about their rights and instructed in the specifics of filing for divorce. This innovation was applauded by women's groups, which found the classes "vital and invaluable if women are ever to achieve independence and confidence."[227]

Self-help can be a community as well as an individual effort. U.S. legal aid pioneers Edgar and Jean Cahn give an example which illustrates the limits of a legal approach and the positive impact of making links with the community. The "legal" problem was the failure of property owners to clean up their properties. The solution, proposed by the poor in one community, was the organization of a "sanitary corps" which gave the poor partial responsibility not just for cleaning up, but also for code inspection and code enforcement. The result, in city after city, was "the reclamation of 'vest pocket parks' from trash heaps and abandoned lots."[228]

Having Good Management

One of the problems with legal aid plans, if not the main problem, is that they are not governed in the interests of the poor. Some plans are controlled by lawyers' associations, whose members' interests are diametrically opposed to those of low-income people. Lawyers want to be as independent as possible, to maximize their incomes, and to keep out competition from legal paraprofessionals. The poor need good-quality, accountable services for the lowest possible cost. These two sets of priorities are totally irreconcilable. To allow lawyers' associations to run legal aid plans is unconscionable.

Governments have a great deal of power over legal aid plans by virtue of the fact that they provide the bulk of their funds and typically appoint most of the members of their boards of directors. The priorities of governments are two-fold and contradictory. On the one hand, they want to keep legal aid budgets as low as possible to reduce their own expenditures. On the other hand, they are afraid of displeasing groups like lawyers' associations, which have a great deal of power on the political scene. Caught between these conflicting preoccupations, the interests of low-income people get squeezed out.

Lawyers hold the majority of the seats on the boards of almost all legal aid plans.[229] It is therefore not surprising to find that the priorities of these plans have little to do with the well-being of their actual or potential clients. It does not seem too much to ask that the directors of a system whose main purpose is supposed to be to improve the lives of the disadvantaged be people who are knowledgeable and care about the problems of the poor. To maintain this client-centred perspective throughout the legal aid structure, boards reflecting these same preoccupations should be appointed or elected at the community level.

Among other changes, client-centred administrations would likely take responsibility for the quality of the services they provide. As we have seen, legal aid plans do not monitor the services they provide through private lawyers and do not feel responsible for ensuring that they are at least adequate. Considering that low-income people are particularly helpless and ignorant about legal matters, this is an intolerable situation. Abt Associates, which performed an evaluation of Ontario's services through lawyers in private practice, recommended that quality control methods be set in place, and stated prerequisites:

> The first (is) that the level of quality required be defined in a measurable way. Secondly, a system must be in place to monitor the quality of service provided, and to identify instances of sub-standard performance so that remedies for these problems can be developed and implemented.[230]

To ensure that this is done, and that quality services are maintained, all legal aid plans should be made accountable to independent watchdogs such as ombudspersons or their equivalent.

Implementing a Good Federal-Provincial Cost-Sharing Agreement

We saw earlier that the federal-provincial cost-sharing agreement on criminal legal aid had an important impact on the choice of services offered by legal aid plans. This is because the agreement specified that certain types of criminal offences had to be covered in order for plans to be eligible for federal subsidies. The agreement also required that legal aid plans apply "flexible rules" with respect to financial eligibility, but this provision was too vague to have much effect. The Canada Assistance Plan, under which the federal government pays a share of the cost of legal aid in civil matters, mandates no minimum coverage and requires only that recipients' incomes and assets be no greater than those of people who are eligible for welfare benefits.

The federal cost-sharing agreement is due to be renegotiated soon, and some of the discussions already taking place will probably have important consequences for the future of legal aid. One of the subjects being debated is the federal responsibility for funding legal aid. Another is whether provinces with more expensive methods of delivery of services should assume the additional costs themselves.

On the subject of the federal government's responsibility to fund legal aid, the two relevant issues are constitutional powers and the obligation to provide services under the Charter of Rights and Freedoms. Criminal law is within the jurisdiction of the federal government, and it is generally expected that the courts will eventually make state-funded legal representation mandatory for serious and complex criminal trials.[231] The provinces have proposed that the federal government assume half the cost of criminal legal aid services and that the minimum

mandatory coverage remain essentially the same as it is now, meaning indictable offences and summary conviction offences likely to lead to imprisonment or loss of earning one's livelihood.[232]

The federal responsibility to fund civil legal aid is also being discussed. One of the reasons prompting the federal government to study this subject was a recommendation by the 1986 Nielsen Task Force on Program Review that consideration be given to consolidating all federal involvement in legal aid under a single agreement.[233] This is particularly timely now, as the future of the Canada Assistance Plan is being discussed within the framework of the social security review process.[234] By far the most logical thing to do with civil legal aid services would be to move them to a comprehensive legal aid cost-sharing agreement.

The Nielsen Task Force had suggested that a federal cost-sharing agreement on civil legal aid might cover only civil matters under federal jurisdiction. This includes divorce (along with maintenance orders and custody), immigration, aboriginal issues, court-appointed legal aid under the Charter of Rights and Freedoms, and federal administrative tribunals on issues such as unemployment insurance and federal pensions. According to law professor Mary Jane Mossman, there is a fundamental difficulty with this proposal. It would produce a legal aid program so incomplete, creating such arbitrary distinctions between similar situations, that it would probably be found discriminatory under the equality guarantees of the Charter:

> What kind of program rationale can be suggested for a national legal aid scheme which offers assistance to unemployed persons and not to those entitled to welfare or to workers' compensation (all of whom receive state-funded income security); or which offers assistance to those who are immigrants or refugees but not to those who are imprisoned in provincial institutions or who are psychiatric patients (all of whom suffer or may suffer a deprivation of liberty); or which offers assistance to those involved in divorce but not to family members when the state intervenes to remove a child from its parents' protection and authority (arguably, both family law matters)?[235]

As a result, Mossman feels that all federal and provincial civil matters should come under the same agreement, which will require close federal-provincial co-operation. One advantage of co-operation is that it would make it possible to include the cost-sharing of general legal aid services, such as outreach, law reform and public education, which do not fit under neat jurisdictional headings. Removing civil legal aid from the Canada Assistance Plan and including

it in a comprehensive legal aid cost-sharing agreement would also enhance the status of these services by moving them out of the welfare category and into the realm of rights.

The Nielsen Task Force also noted that some legal aid plans used service delivery methods through private lawyers which were much more expensive than others. The Task Force's position was that while provinces and territories should remain free to choose the delivery methods they want, there is no reason why the federal government should pay for these additional costs.[236] Officials from all provinces and territories with the exception of Ontario agreed as follows:

> The National Review of Legal Aid, with the exception of Ontario, believes that jurisdictions choosing to operate a high cost delivery system should be prepared to accept the additional costs of the system as a matter of provincial/territorial responsibility... Again, with the exception of Ontario, the Review believes that, as long as there are limits on federal cost sharing dollars, a funding mechanism should be developed that would recognize provincial/territorial responsibility for its choice of delivery model. The effect of this should be restricted to delivery model choices. A jurisdiction faced with high costs because of factors it does not control should not be penalized.[237]

Most important, the new federal agreement on cost-sharing of legal aid should establish a viable mechanism providing stable and adequate funding to legal aid plans to allow them to continue and improve their services to the low-income population.

Abolishing Imprisonment for Fines

Close to 50,000 admissions to provincial jails in 1992-93 were for failure to pay fines. More than 20,000 admissions were in Alberta and 10,000 in Quebec.[238] As the offences these people committed were too minor to deserve being sent to jail in the first place, this situation is scandalous. It is made even worse by the fact that a disproportionate number of those who go to jail for fines are aboriginal people.

The Manitoba Aboriginal Justice Inquiry blamed three factors for this problem.[239] The first is out-of-court processes for minor provincial offences. Most of them are violations of the Highway Traffic Act (including parking tickets) and the Liquor Control Act. In some provinces,

such as Manitoba, failure to contest the fine and pay it leads automatically to jail. A person's ability to pay is never considered. To solve this, the Inquiry recommended a system which already exists in some jurisdictions. Upon failure to pay a fine on time, an agency responsible for fine collections would contact the person to offer financial counselling or advise that their properties or salaries would be seized in payment. Failing this, more consultation would take place and delays would be offered or community service work suggested to settle the debt in kind. Only if nothing else worked would the person go to jail.

The second problem is under the Criminal Code. It appears that many judges who impose fines do not fulfil their obligation under that law to consider the accused's ability to pay. Instead, they impose fines without inquiring into this and impose default orders (to imprison in case of failure to pay) at the same time. The Manitoba Inquiry recommended that the Criminal Code be amended to prevent judges from issuing such automatic jailing orders in cases of non-payment of fines.

Thirdly, there are problems with fine option programs, which exist in most jurisdictions to arrange community work in place of imprisonment. The Manitoba Inquiry reported that many offenders are not even aware that the program exists or only find out about it after they are arrested. Aboriginal women have additional difficulties. Many said they could not participate because they had to take care of their children, could not pay for transportation, or were afraid to participate. The Inquiry suggests that ways be found to support and encourage these women, or to find viable options which would be more compatible with their lifestyles.

If all these recommendations are implemented, Canadians will no longer go to jail for being poor - and taxpayers will save on unnecessary prison costs. It cost the provinces and territories an average of $113 a day to keep a person in jail in 1992-93.[240]

Preventing Crime

As criminal cases are the main cause of exploding legal aid budgets, an obvious way to reduce the demand on legal aid would be to reduce crime. In 1993, the House of Commons Standing Committee on Justice issued a report on crime prevention in which it wrote that the conventional approaches to controlling crime, such as hiring more police officers and building

more prisons, do not work.[241] The United States, described as "the most violent and self-destructive nation on earth,"[242] has a rate of imprisonment four times higher than that of Canada and almost eight times that of Sweden.

Some level of crime will always exist, but the only effective means of controlling it and keeping it from increasing are preventive ones, the committee said. The two types of measures which have the best chance of succeeding are: efforts to reduce opportunities for crime, and a greater focus on young people at risk and the social and economic factors that breed crime.[243]

Reducing opportunities for crime involves very concrete actions by individuals and communities, such as installing better lighting on streets, having stronger locks and alarms in business and residential premises, and ensuring that unoccupied residences appear lived-in. It means organizing groups like Neighbourhood Watch and Block Parents to report suspicious activities and provide help to children.

Most of these methods of controlling crime are aimed at crimes against property. They do little to reduce problems like family violence. In these situations, we have to address the host of problems that breed criminal behaviour: poverty, parental abuse and neglect, illiteracy, low self-esteem, inadequate housing, school failure, unemployment, inequality and dysfunctional families. Hugh Baker, a native courtworker from British Columbia, warned the Justice Committee that all attempts to reduce crime and violence in aboriginal communities would fail unless the social and economic deprivation suffered by native people is addressed:

> Crime is greater in the aboriginal community because pimps come to the aboriginal community knowing there are women who are desperate to earn an income. Drug dealers come to the aboriginal community knowing there are people who are desperate to escape, even if only mentally. People come to the aboriginal community knowing there are going to be people who are intoxicated who they can take advantage of, either by beating them or robbing them. People come to the aboriginal community trying to start youth gangs because they know the youth have no future... and the gang can offer them something better than what they have.[244]

The greatest harm aboriginal offenders cause is to people closest to them. A study found that a minimum of 41 percent of violent crimes committed by aboriginal people are directed against members of their own families, thereby continuing a vicious circle of abuse and

crime.[245] The links between abuse and the criminality of women are clear. Carol Hutchings of the Elizabeth Fry Society of Edmonton told the Justice Committee that:

> The progression we see over and over again is sexual abuse, truancy, running away from home, prostitution, drug abuse, and criminal behaviour. The first year I worked with the Elizabeth Fry Society, seventeen of our clients died. Fourteen of those clients were aboriginal and all were victims of early childhood sexual abuse.[246]

What can we do to improve the situation? Give more support to parents and reduce inequalities and child poverty. More specifically, the committee gives the example of the Perry Preschool Project, implemented in Michigan in 1962. Children aged three and four from deprived families received daily preschool programs for 2.5 hours per day and a home visit once a week for 1.5 hours. When they reached age 19, the children were compared to a control group. More of the children in the project completed high school and attended post-secondary school and were employed. Fewer were on welfare or had criminal records. A cost-benefit analysis of the project showed a return of $5 for every $1 invested.[247]

The Manitoba Aboriginal Justice Inquiry described another type of successful program:

> In Berens River ... we were told of the tremendous drop in crime which accompanied the attendance by the community of the Northern Fly-In Sports Camp. This non-profit organization sets up sports camps in northern communities for several weeks each summer. This experience clearly shows that the problem of youth crime in northern Manitoba, and probably elsewhere, can be addressed to some significant degree by the provision of adequate and appropriate youth recreational programs.[248]

Witnesses appearing before the Justice Committee agreed. Dr. Calvin Lee of British Columbia said that recreational programs could reduce youth crime by developing resiliency in immigrant children undergoing the multiple stresses of relocation in a new country.[249]

SUMMARY AND RECOMMENDATIONS

Low-income Canadians have a multitude of legal needs. As recipients of income security programs, they depend on laws and government regulations for the necessities of life. As consumers, they are prime targets for fraud and misrepresentation. As tenants, they are most affected by illegal rent hikes and housing code violations. Special groups among the poor, such as women, aboriginal people, refugees and immigrants, people with disabilities, and the elderly, have particular difficulties causing them to need legal advice and representation. Generally, low-income people are the least well informed about the law. They are least likely to recognize that their problems have legal implications.

Legal aid plans do a very poor job of meeting the legal needs of low-income people. Because all plans are swamped with clients, most avoid activities which would generate more cases, such as informing disadvantaged people about their legal rights and recourses. Half or more of the cases legal aid plans handle are criminal matters, which affect only that small proportion of the poor who have ever been in trouble with the law. The rest of the legal aid caseload is devoted mainly to family law, which touches a sensitive, but also quite small portion of the legal needs of the poor. After all, how often can a person separate or divorce? Also, many family law cases involve women who are being coerced by welfare departments into suing their ex-spouses for maintenance payments which will be deducted from their welfare benefits.

From the point of view of poor people, the most important legal problems concern issues such as eligibility for various types of government benefits, as well as consumer, employment and landlord-tenant disputes. In recognition of their importance for the poor, these kinds of cases are known collectively as "poverty law." Some legal aid plans do not offer services in this area at all, and most of the rest offer minimal help. In the only province where they are fully covered, Quebec, the financial eligibility criteria are so strict that most people with such problems do not qualify for services. Financial limits exclude low-income earners in almost all jurisdictions.

Misallocation of resources and overly stringent financial criteria are not the only serious problems. Most legal aid cases are not handled by staff lawyers, but are referred to lawyers in private practice. This is wasteful and can be detrimental to clients. In criminal law, many

studies have demonstrated that private lawyers are much more expensive, and that using them instead of staff lawyers results in more legal aid clients going to jail. Another major cost-effectiveness issue is that legal aid plans almost never use paralegal workers to give direct services, even though it has been demonstrated that these paralegals can handle many minor situations as well as lawyers and at a much lower cost.

The main reason for cost-effectiveness problems is that legal aid plans are dominated by lawyers. This is carried to the extreme in Ontario and New Brunswick, where legal aid is run by the lawyers' associations. Lawyers directly or indirectly control legal aid in almost all other jurisdictions, with the result that decisions concerning the means of delivering services are not made in the best interests of the poor. Defenders of the judicare system have tried to argue that hiring staff lawyers to deliver legal aid services would harm low-income people by taking away their free choice of counsel. The simple truth is that the majority of potential legal aid clients do not know any lawyers and would prefer not to have to choose one.

To correct the worst of these problems, the National Council of Welfare makes the following recommendations:

* Provincial and territorial legal aid plans should be independent of governments and independent of lawyers' associations. The directors of legal aid plans should be people who have demonstrated a commitment to defending the interests of the poor and whose backgrounds reflect the multiple needs of the low-income community. To maintain a client-centred perspective throughout the legal aid structure, boards of directors with a similar composition should also be appointed or elected at regional or local levels.

* Given the vulnerability of many legal aid clients, the boards of directors of legal aid plans must take responsibility for controlling the quality of all the services they provide, including those furnished through private lawyers. Effective quality control includes defining quality in a measurable way, setting up systems to monitor services and identify sub-standard performances, and developing and implementing appropriate remedies.

* All legal aid plans should be accountable to independent watchdogs such as ombudspersons or their equivalent.

* Legal aid plans should have objective studies done by independent outside evaluators to determine which models of service delivery would best serve their clients, and should adjust their services in accordance with the results. The options examined should include the use of paralegal personnel for whatever tasks they can handle.

* Legal aid plans should make maximum use of non-traditional methods of dealing with conflicts such as mediation, conciliation and self-help. They should also grant priority to the prevention of disputes through information and advocacy programs provided directly or through other agencies and community advocacy organizations.

* The new federal-provincial cost-sharing agreement on legal aid currently being negotiated should meet the following conditions:

  . it should cover criminal and civil legal aid cases and preventive services such as information, outreach and advocacy;

  . it should give at least as much support to civil as to criminal legal aid services; and

  . it should use a funding formula which will encourage legal aid plans to adopt the most cost-effective means of delivering their services.

* The criminal justice system should make greater use of diversion in dealing with minor offences. This method, under which offenders are not charged but are dealt with by community-based groups, is particularly appropriate for young offenders and aboriginal peoples.

* The Criminal Code and other penal laws should be modified to ensure that everyone who fails to pay a fine is given the opportunity to settle the debt by doing community service work. Fine option programs should be broadened to include community work activities which are compatible with a greater range of lifestyles.

* Governments should recognize the strong links which exist between poverty, child abuse and neglect, unemployment, inequality and crime, and should give their unqualified support to measures which will correct these problems, such as programs to reduce child

poverty and abuse and to provide meaningful activity, challenge and hope to adolescents and young adults.

* * *

The first legal aid programs were charitable services provided free of charge by lawyers with a strong sense of justice. Since then, legal aid has become an industry largely run by lawyers for the benefit of lawyers. The time has now come for legal aid to be directed by people whose main goal will be to grant equal access to justice to the poor.

FOOTNOTES

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7. See Panacui v. The Legal Aid Society of Alberta (1987), 40 C.C.C. (3d) 459 (Alta. Q.B.); Regina v. Rowbotham (1988), 63 C.R. 113 (Ont. C.A.); Regina v. Robinson (1989), 63 D.L.R. (4th) 289 (Alta.C.A.); Regina v. Rockwood (1989), 49 C.C.C. (3d) 129 (N.S.C.A.); Regina v. Munroe (1990), 97 N.S.R. (2d) 361 (N.S.C.A.).

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13. Canadian Crime Statistics, Table 2. See note 4 above.

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15. "Reported and Unreported Crimes," Canadian Urban Victimization Survey (Ottawa: Ministry of the Solicitor General of Canada, 1985).

16. Gabor, pp. 200, 290-91. See note 12 above.

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64. Population figure for Ontario from same as above, Table 4.

65. Some of these figures are based on unpublished data provided by the Canadian Centre for Justice Statistics, Statistics Canada.

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91. Abt Associates, p. 194. See note 88 above.

92. Federal/Provincial/Territorial Working Group of Attorneys General Officials on Gender Equality in the Canadian Justice System, Gender Bias in the Courts (Ottawa, 1992), pp. 1-3; Talmey, Lawris, cited in Dauphinais, p. 75, see note 2 above; Groupe de travail sur l'accessibilité à la justice, pp. 391-94, see note 49 above; Sommet de la Justice, La situation des femmes dans l'administration de la justice: Etat de la Situation, Document de consultation 1.4 (Quebec: Department of Justice, 1992), pp. 2-15; Agg, p. 75, see note 29 above.

93. National Symposium on Women, Law and the Administration of Justice, Proceedings of the Symposium, Volume 1 (Ottawa: Department of Justice, 1991), pp. 225, 250; Hamilton and Sinclair, pp. 36-37, 85, see note 43 above.

94. Agg, p. 103. See note 29 above.

95. Abt Associates, p. 191. See note 88 above.

96. Cahn, Edgar S. and Jean C. Cahn, "What Price Justice: The Civilian Perspective Revisited," Notre Dame Lawyer, Vol. 41, 1965-66, p. 950; Robb, John D., "Alternate Legal Assistance Plans," in F.H. Zemans, ed., Community Legal Services in Perspective: The Development of Legal Services in Canada (Toronto: Osgoode Hall Law School, York University, 1972), p. 206.

97. Cotler and Marx, p. 31 see note 38 above; Agg, pp. 73, 83, see note 29 above; Groves, Dorothy, cited in Dauphinais, p. 74, see note 2 above; Abt Associates, pp. 182, 191-99, 97. see note 88 above; Hamilton and Sinclair, p. 500, see note 43 above.

98. Abt Associates, pp. 169, 182, 191, 197-99. See note 88 above.

99. Agg, p. 82, see note 29 above; Abt Associates, pp. 179-81, see note 88 above.

100. Abt Associates, pp. 209-10, 215-16. See note 88 above.

101. Same, pp. 87-88.

102. Most of the information in this section is drawn from Legal Aid in Canada: Description of Operations, under the "Eligibility" heading for each jurisdiction (see note 58 above) and from interviews with officials from each legal aid plan.

103. Same.

104. Except in Old Crow where, according to the guidelines, "any person may be found to be eligible." Legal Aid in Canada: Description of Operations, p. 12.9. See note 58 above.

105. Commission des services juridiques, 21e Rapport Annuel, 31 mars 1993 (Montreal, 1993), p. 75.

106. Commission des services juridiques, 18e Rapport Annuel, 31 mars 1990 (Montreal, 1990), pp. 24-25; Groupe de travail sur l'accessibilité à la justice, pp. 49-50, see note 49 above.

107. Agg, p. 57, see note 29 above; National Review of Legal Aid, p. 180, see note 56 above; Abt Associates, p. 169, see note 88 above; Groupe de travail sur l'accessibilité à la justice, p. 9, see note 49 above; Report of the Saskatchewan Legal Aid Review Committee (Regina, 1992), pp. 29, 49.

108. Cawsey, R.A., Justice on Trial (Edmonton: Task Force on the Criminal Justice System and its Impact on the Indian and Metis People of Alberta, 1991), p. 3-16.

109. Prairie Research Associates et al., Evaluation of the Legal Aid Manitoba Expanded Eligibility Program: Final Report (Winnipeg, 1991), p. xi.

110. Brantingham, Patricia L. and Paul Brantingham, An Evaluation of Legal Aid in British Columbia (Vancouver, 1984), pp. 291-8, 321-3.

111. Legal Aid Delivery Models, p. 167, see note 57 above; Groupe de travail sur l'accessibilité à la justice, p. 101, see note 49.

112. Sloan, Rick L., An Evaluation of the Effects of a User Fee and Other Fiscal Restraint Policies on the Service Delivery System of Legal Aid Manitoba: Final Report (Winnipeg: Legal Aid Services Society of Manitoba and Department of Justice Canada, 1980).

113. Agg, pp. 13, 119, see note 29 above, and interview with British Columbia legal aid officials.

114. The Report of the Task Force on Legal Aid in Alberta (Edmonton, 1988-89), p. 17.

115. Information on user fees in Alberta and New Brunswick was obtained from officials of the legal aid plans of these provinces.

116. Agreement Respecting Legal Aid in Criminal Law Matters and in Matters Relating to the Young Offenders Act, section 3(b)(i).

117. Legal Aid in Canada: Description of Operations, under the headings "Coverage" and "Special Services" for each jurisdiction, see note 58 above; and interviews with officials of each legal aid plan.

118. Department of Justice Canada, Bureau of Review, Programme Evaluation, Patterns in Legal Aid, 2nd Edition (Ottawa, October 1993), p. 23.

119. Interview with Prince Edward Island legal aid official.

120. Interview with Yukon legal aid official.

121. Hamilton and Sinclair, p. 367. See note 43 above.

122. Cawsey, p. 3-21. See note 108 above.

123. Statistics Canada, Canadian Centre for Justice Statistics, Sentencing in Adult Criminal Provincial Courts: A Study of Six Canadian Jurisdictions (Ottawa, 1993), p. 29; Hamilton and Sinclair, pp. 109, 420-4, see note 43 above.

124. 21e rapport annuel 1993, p. 75. See note 105 above.

125. The information contained in Graph C was drawn from the annual reports of each legal aid plan for 1992-93, except for British Columbia and Prince Edward Island where the latest data available is for 1991-92. The population figures used to calculate these rates are from Legal Aid in Canada: Resource and Caseload Statistics, Table 2, see note 55 above.

126. Legal Aid in Canada: Resource and Caseload Statistics, Table 10.

127. Patterns in Legal Aid, pp. 15-17. See note 118 above.

128. Citizenship and Immigration Canada, Facts and Figures: Overview of Immigration (Ottawa, 1994), p. 4.

129. Seventy-three percent of Saskatchewan's caseload is made up of criminal cases, according to Legal Aid in Canada: Resource and Caseload Statistics, Table 10. See note 55 above.

130. For Nova Scotia: Nova Scotia Legal Aid Commission, Sixteenth Annual Report 1992-93 (Halifax, 1993), Auditor General's report, p. 2; for Quebec: 21e rapport annuel 1993, p. 33, see note 105 above; for Manitoba: Legal Aid Manitoba, Twenty-First Annual Report, March 31, 1993 (Winnipeg, 1993), pp. 30-1.

131. Community Legal Clinics 1992-1993, p. 8. See note 51 above.

132. Same, p. 12.

133. Agg, p. 72. See note 29 above.

134. Legal Aid in Canada: Resource and Caseload Statistics, Table 7. See note 55 above.

135. 21e rapport annuel 1993, pp. 34-109, see note 105 above; Community Legal Clinics 1992-1993, pp. 9-12, see note 51 above.

136. The information in this paragraph is from Legal Aid in Canada: Description of Operations, under the heading "Special Services" (see note 58 above) and from the annual reports of each legal aid plan.

137. Legal Aid Delivery Models, pp. 193-4. See note 57 above.

138. Community Legal Clinics 1992-1993, p. 3. See note 51 above.

139. Same, p. 10.

140. 21e rapport annuel 1993, pp. 97-98 (for Cowansville) and 83-87 (for Hull). See note 105 above.

141. Legal Aid Manitoba, Twentieth Annual Report, March 31, 1992 (Winnipeg, 1992), pp. 21-23, and Twenty-First Annual Report, March 31, 1993 (Winnipeg, 1993), pp. 13-15.

142. Dalhousie Legal Aid Service, Summary Annual Report 1992-1993 (Halifax, 1993), p. 5.

143. Legal Aid in Canada: Description of Operations, under the heading "Special Services," see note 58 above; Working Margins Consulting Group, Northern Paralegal Project Evaluation: Final Report (Winnipeg, 1989).

144. The information in this paragraph is from an interview with Bruce Errol McKay, executive director of the Legal Services Board of the Northwest Territories, and from the following: Department of Justice of Canada, Aboriginal People and Justice Administration: A Discussion Paper (Ottawa, 1991); Co-West Associates, Program Review and Evaluation Assessment of the Criminal Courtworker Program: Native Counselling Services of Alberta (Ottawa: Department of Justice of Canada, 1991); Don Ference & Associates Ltd, An Evaluation of the Native Courtworker Programme in British Columbia (Ottawa: Department of Justice of Canada, 1989). Saskatchewan had a native courtworker program from 1973 to 1987. In 1994, it was in the process of reinstating the program.

145. Legal Aid in Canada: Resource and Caseload Statistics, Table 5. See note 55 above. The jurisdictions where criminal matters accounted for more than half of direct legal service expenditures in 1992-93 were Newfoundland, P.E.I., New Brunswick, Manitoba,

Saskatchewan, Alberta, the Northwest Territories and Yukon. Data for Quebec are not available.

146. Agg, pp. 100-1. See note 29 above.

147. Legal Aid in Canada: Resource and Caseload Statistics, Table 4. See note 55 above.

148. See Table 3 in Chapter II above.

149. Agg, p. 8. See note 29 above.

150. The 65 percent is from Commission des services juridiques, 14e rapport annuel, 31 mars 1986 (Montreal, 1986), Appendix 8. The 126 percent is from Sloan, Rick, Legal Aid in Manitoba: An Evaluation Report (Winnipeg: Department of Justice Canada and Attorney General of Manitoba, 1987), p. 172, for offences of breaking and entering. Other studies are: Brantingham, P.L., The Burnaby, British Columbia Experimental Public Defender Project: An Evaluation Report (Ottawa: Department of Justice Canada, 1981); Brantingham and Brantingham, see note 110 above; DPA Group Inc.,Evaluation of Saskatchewan Legal Aid (Ottawa: Department of Justice Canada, 1988); DPA Group Inc., A Costing Sub-Study of the Saskatchewan Legal Aid Evaluation (1989); Gervais and Cloutier, see note 76 above; Poel, D.H., The Nova Scotia Legal Aid Evaluation Report: Entering the Third "Generation" (Halifax: Nova Scotia Legal Aid Commission and Department of Justice Canada, 1983). Summaries of these studies appear in: British Columbia Ministry of Attorney General, Legal Aid Models: A Comparison of Judicare and Staff Systems (Victoria, 1991); Patterns in Legal Aid, see note 118 above; Legal Aid Delivery Models, see note 57 above.

151. Except in the Nova Scotia study by Poel (see note 150 above), where the criminal cases referred to private lawyers were more serious than those handled by staff lawyers, with the result that the private lawyers cost 506 percent more. This is cited in Patterns in Legal Aid, p. 42, see note 118 above.

152. Patterns in Legal Aid, p. 45.

153. Same, p. 63.

154. Agg, p. 113. See note 29 above.

155. Commission des services juridiques, 20e Rapport Annuel, 31 mars 1992 (Montreal, 1992), p. 19; 21e Rapport Annuel, 31 mars 1993 (Montreal, 1993), p. 20.

156. Law Society of Upper Canada, Ontario Legal Aid Plan Annual Report 1993 (Toronto, 1994), p. 11, and interview with Robert L. Holden, provincial director of the Ontario Legal Aid Plan.

157. Patterns in Legal Aid, p. 46. See note 118 above.

158. Gervais and Cloutier, p. 36, see note 76 above; Legal Aid Delivery Models, p. 38, see note 57 above.

159. For Quebec, Gervais and Cloutier, same. For Manitoba, Legal Aid in Manitoba, p. 172, see note 150 above.

160. National Symposium on Women, Law and the Administration of Justice, Recommendations from the Symposium, Volume II (Ottawa: Department of Justice Canada, 1991), p. 140; Mossman, Mary Jane, Gender Equality and Legal Aid Services: Directions for Research (Ottawa: Department of Justice, 1992), p. 45.

161. Agg, p. 123. See note 29 above.

162. Legal Aid Delivery Models, p. 94. See note 57 above.

163. These results are reviewed in Patterns in Legal Aid, pp. 34-6, see note 118 above, and in British Columbia Ministry of Attorney General, see note 150 above. The actual study reports are: Brantingham, see note 150 above; Brantingham and Brantingham, see note 110 above; Legal Aid in Manitoba, see note 150 above; and Evaluation of Saskatchewan Legal Aid, see note 150 above.

164. Legal Aid Delivery Models, pp. 94-8. See note 57 above.

165. Ministry of Attorney General of British Columbia, p. i-ii. See note 150 above.

166. Legal Aid Delivery Models, p. 97. See note 57 above.

167. Report of the Saskatchewan Legal Aid Review Committee (Regina: 1992), p. 24. On the high quality of legal aid staff criminal lawyers, see Patterns in Legal Aid, p. 39 (note 118 above) and Legal Aid Delivery Models, pp. 91-4 (note 57 above).

168. The Quebec Legal Aid Act specifically provides that cases may be referred to private lawyers when the staff is insufficient to meet the demand: Gervais and Cloutier, p. 35, see note 76 above.

169. Legal Aid Delivery Models, p. 97. See note 57 above.

170. "Ontario Law Society calls Man. Legal Aid Study 'Unreliable,'" and "Ontario Law Society Report Slams Public Defenders," The Lawyers Weekly, December 13, 1991, p. 9.

171. Ontario Legal Aid Plan Annual Report 1993, p. 14. See note 156 above.

172. Agg, p. 7. See note 29 above.

173. Abt Associates, pp. 134-6, 141-6. See note 88 above.

174. Same, p. 166; also see pp. 6, 164-166.

175. Cawsey, p. 3-12. See note 108 above.

176. Same.

177. Same.

178. Agg, p. 122. See note 29 above.

179. Barreau du Québec, Mémoire du Barreau du Québec sur l'Aide Juridique (Montreal, 1993), p. 33.

180. Ontario Legal Aid Plan Annual Report 1993, p. 5. See note 156 above.

181. Barreau du Québec, p. 36, see note 179 above; Agg, p. 135, see note 29 above; Legal Aid Delivery Models, p. 138, see note 57 above.

182. Savage, Harvey, "Ontario's Community Clinics Provide Law for the Little Guy," Canadian Legal Aid Bulletin, Vol. 3, 1978-79, p. 688.

183. Figure provided by the Canadian Federation of Law Societies, as cited in Legal Aid in Canada: Resource and Caseload Statistics, p. v. See note 55 above. This percentage does not include Nova Scotia and New Brunswick.

184. Abt Associates, pp. 134-6, 141-6. See note 88 above.

185. Gervais and Cloutier, Appendix 9, pp. 19-20, see note 76 above; Legal Aid Delivery Models, pp. 133-8, see note 57 above; British Columbia Ministry of Attorney General, pp. vii, 24, 29, 49, see note 150 above.

186. Barreau du Québec, p. 37. See note 179 above.

187. Legal Aid in Canada: Resource and Caseload Statistics, Tables 4, 7, 11. See note 55 above.

188. The Legal Services Controversy, p. 67. See note 1 above.

189. The information in this paragraph and following ones was obtained in interviews with officials of all legal aid plans.

190. Graham Spencer, Director of Finance, Legal Services Society of British Columbia.

191. Law Society of Upper Canada, Ontario Legal Aid Plan Annual Report 1992 (Toronto, 1992), p.5.

192. Law Society of Upper Canada, Legal Aid Bulletin, No. 96 October 1994, p. 1. For complaints about the difficulty of changing lawyers under the Ontario Legal Aid Plan, see Abt Associates, p. 185 (see note 88 above).

193. Gathercole, R.J., "Legal Services and the Poor," in Evans and Trebilcock, p. 419, see note 70 above; Hazard, Geoffrey C., "Social Justice Through Civil Justice," University of Chicago Law Review, Vol. 36, 1968-9, p. 702; Statsky, William P., "Legal Paraprofessionals," in Conference on Legal Aid: Report and Proceedings (Ottawa: Canadian Council on Social Development, 1975), p. 40; Morgan, Ellsworth, "Legal Services from the Client Perspective," in Access to Justice: Report of the Conference on Legal Aid 1975 (Ottawa: Canadian Council on Social Development, 1976), p. 70.

194. Snider, D. Laureen, "Legal Aid, Reform, and the Welfare State," in Gavigan, p. 712. See note 80 above. This originally appeared in Brickey, S. and E. Comack, eds., The Social Basis of Law: Critical Readings in the Sociology of Law (Toronto: Garamond Press, 1986).

195. Legal Aid Delivery Models, p. 135. See note 57 above.

196. In favour of keeping the choice of lawyers in these cases, see Agg, p. 135 (note 29 above); against, see National Review of Legal Aid, pp. 39-41 (note 56 above).

197. Zemans, Frederick, "A Research Prospective on the Evolution of Legal Services in Canada," Canadian Legal Aid Bulletin, Vol. 1, No. 2, p. 106, citing Victor Savino.

198. Zemans, Frederick, "The Non-Lawyer As a Means of Providing Legal Services," in Evans and Trebilcock, p. 293. See note 70 above.

199. Same.

200. Legal Aid: Resource and Caseload Statistics, Table 7. See note 55 above.

201. Hagan, John, "Transitions in the Legal Profession," The Law Society Gazette, Vol. 27, 1993, p. 94.

202. National Review of Legal Aid, p. 87. See note 56 above.

203. Ianni, Ron W., Report of the Task Force on Paralegals (Toronto: Ministry of the Attorney General), p. 11, 17-20.

204. Same, pp. xvii-xxv, 27, 31.

205. Agg, pp. 6-7. See note 29 above.

206. Abt Associates, pp. 181-183. See note 88 above.

207. Agg, p. 93. See note 29 above.

208. Interview with Allan Fineblit, executive director of Legal Aid Services of Manitoba.

209. Cahn and Cahn, Notre Dame Lawyer, p. 956, footnote 41. See note 96 above.

210. Zemans, Frederick, "The Non-Lawyer As a Means of Providing Legal Services," in Evans and Trebilcock, p. 273. See note 70 above.

211. Cahn and Cahn, Notre Dame Lawyer, p. 937. See note 96 above.

212. Federal/Provincial/Territorial Working Group of Attorneys General Officials on Gender Equality in the Canadian Justice System, Access to Justice for Women (Ottawa, 1992), p. 33.

213. Report of the Task Force on Alternative Dispute Resolution, p. 12. See note 50 above.

214. Cole, Jade, A Discussion of the Potential Cost-Effectiveness and Efficiency of Alternative Dispute Resolution (Ottawa: Department of Justice Canada, 1993), pp. 18-19.

215. National Review of Legal Aid, p. 104. See note 56 above.

216. Agg pp. 13-14, see note 29 above; briefs to the Quebec parliamentary committee on legal aid presented by the Fédération des ACEF du Québec and the Fédération des associations de familles monoparentales du Québec, January 1994.

217. Agg, same.

218. Access to Justice for Women, pp. 36-38. See note 212 above.

219. A.R.A. Consultants, Feasibility Study of Alternative Dispute Mechanisms for Aboriginal People in Manitoba (Winnipeg: 1990), pp. 19-20.

220. Same, pp. 18-19; National Review of Legal Aid, p. 114, see note 56 above.

221. National Review of Legal Aid, same.

222. Hamilton and Sinclair, p. 574. See note 43 above.

223. Nightingale, Margo, "Just-Us" and Aboriginal Women (Ottawa: Department of Justice Canada, Aboriginal Justice Directorate, 1994), p. 24.

224. Agg, pp. 76-77, see note 29 above; Abt Associates, pp. 181-183, see note 88 above.

225. Agg, p. 77.

226. Wexler, Stephen, "Practicing Law for Poor People", in Gavigan, p. 226. See note 80 above. This originally appeared in the Yale Law Journal, Vol. 79, 1970, p. 1005.

227. Goldring, John, et al., eds., Access to Law: The Second Seminar on Australian Lawyers and Social Change (Canberra: Australian National University and Australian National University Press, 1980), p. 203.

228. Cahn and Cahn, Notre Dame Lawyer, p. 945. See note 96 above.

229. The following information was obtained in interviews with officials of all legal aid plans: five of the eight members of the board of directors of the Newfoundland legal aid plan are lawyers; all but one of the seven Nova Scotia directors are lawyers; the directors of the New Brunswick plan are all lawyers; eight of the 12 Quebec directors are lawyers; ten of the 16 Ontario directors are lawyers and one is a law student; five of the 12 members of the Manitoba board of directors are lawyers; six of the 11 Saskatchewan directors are lawyers; 11 of Alberta's 13 directors are lawyers; four of British Columbia's ten directors are lawyers; three of the nine Northwest Territories directors are lawyers; and none of Yukon's directors are lawyers. The situations in British Columbia and Yukon are unusual because in both cases several lawyers resigned from the boards as a result of recent developments.

230. Abt Associates, p. 164. See note 88 above.

231. National Review of Legal Aid, p. 48. See note 56 above.

232. Same, pp. 50, 127.

233. Improved Program Delivery: Justice System (Ottawa: Task Force on Program Review, 1985), p. 201.

234. Human Resources Development Canada, Improving Social Security in Canada: A Discussion Paper (Ottawa: Minister of Supply and Services Canada, 1994), p. 73.

235. Mossman, p. 43. See note 27 above.

236. Improved Program Delivery: Justice System, p. 201. See note 233 above.

237. National Review of Legal Aid, pp. 219-220. See note 56 above.

238. Adult Correctional Services 1992-93, Table 15. See note 23 above.

239. The information contained in this paragraph and the following ones is from: Hamilton and Sinclair, pp. 419-25. See note 43 above.

240. Adult Correctional Services 1992-93, Table 12. See note 23 above.

241. House of Commons, Standing Committee on Justice and the Solicitor General, Crime Prevention in Canada: Toward a National Strategy (Ottawa, 1993), p. 2.

242. Cited in same, p. 2.

243. Same, pp. 11-12, 15.

244. Same, p. 11.

245. Hamilton and Sinclair, p. 88. See note 43 above.

246. Crime Prevention in Canada, p. 10. See note 241 above.

247. Same, p. 17.

248. Hamilton and Sinclair, p. 587. See note 43 above.

249. Crime Prevention in Canada, p. 9. See note 241 above.

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